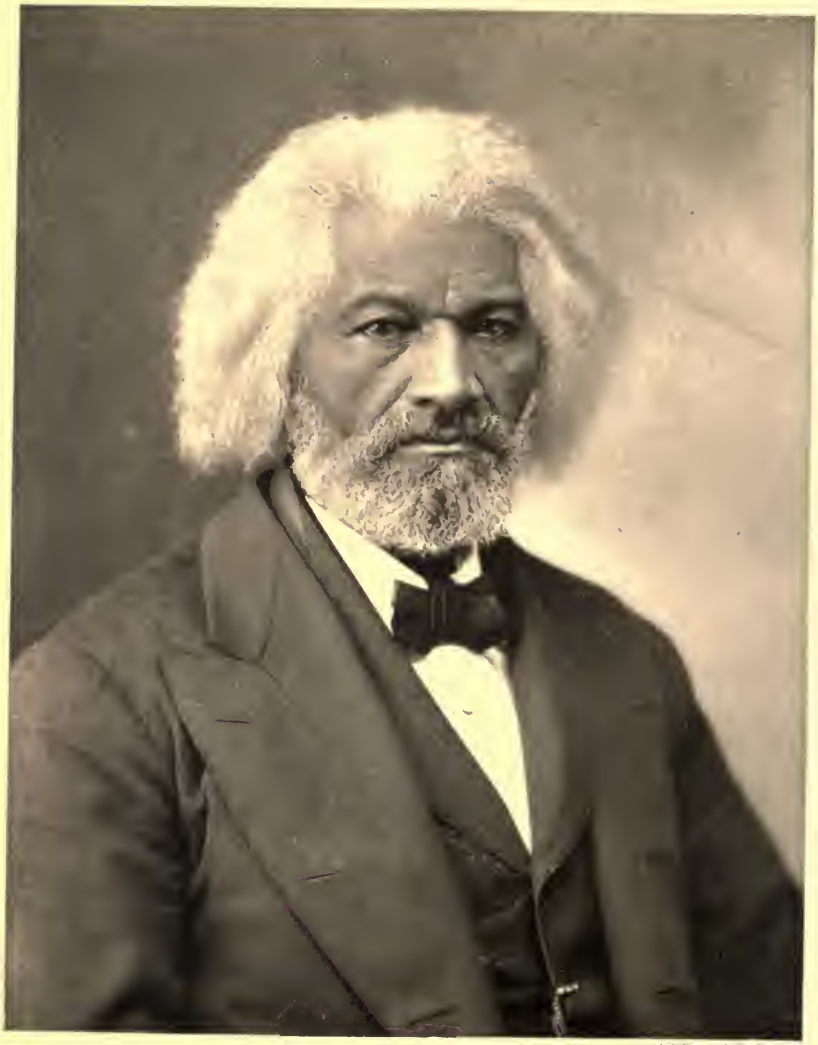

FREDERICK DOUGLASS

Statesman Edition Vol. XIX

Charles Sumner

HIS COMPLETE WORKS

With Introduction

BY

HON. GEORGE FRISBIE HOAR

BOSTON
LEE AND SHEPARD
MCM

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Norwood Press:
Norwood, Mass., U.S.A.

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COLORED SCHOOLS IN WASHINGTON.

SPEECH IN THE SENATE, FEBRUARY 8, 1871.

ON the motion of Mr. Patterson, of New Hampshire, Chairman of the Committee on the District of Columbia, to strike out from a bill relative to schools in the District the clause, —

"And no distinction, on account of race, color, or previous condition of servitude, shall be made in the admission of pupils to any of the schools under the control of the Board of Education, or in the mode of education or treatment of pupils in such schools," —

Mr. Sumner said: —

MR. PRESIDENT, — My friend, the Chairman of the Committee, says that this proposition is correct in principle. But to my mind nothing is clearer than that where anything is correct in principle it must by inevitable law be correct in practice. Nobody here makes this law, — not the Senate, not Congress. By a higher law than any from human power, whatever is correct in principle must be correct in practice.

I stand on this rule. It is the teaching of all history; it is the teaching of human life; especially is it the teaching of our national experience during these latter eventful years. How often have propositions been opposed in this Chamber as correct in principle, but not practical! And how often what was correct in principle triumphed over every obstacle! When the proposition for the abolition of Slavery in the District was

brought forward, we were told that it was correct in principle, but that it would not work well, — that it was not practical! So when the proposition was brought forward to give the colored people the right to testify in court, we were assured that it was correct in principle, but that it would not be practical.

The same objection was made to the proposition that colored people should ride in the horse-cars; and I was gravely told that white people would not use the cars, if they were opened to colored people. The proposition prevailed, and you and others know whether any injury therefrom has been done to the cars.

Then, again, when it was proposed to give the ballot to all, it was announced that it might be correct in principle, but that it was not practical; and I, Sir, was seriously assured by an eminent citizen that it would bring about massacre at the polls.

Now that it is proposed to apply the same principle to the schools, we are again assured, with equal seriousness and gravity, that, though correct in principle, it is not practical. Sir, I take issue on that general proposition. I insist that whatever is correct in principle is practical. Anything else would make this world a failure, and obedience to the laws of God impossible.

The provision which my friend would strike out is simply to carry into education the same principle which we have carried into the court-room, into the horse-car, and to the ballot-box: that is all. If there be any argument in favor of the provision in these other cases, allow me to say that it is stronger in the school-room, inasmuch as the child is more impressionable than the man. You should not begin life with a rule that sanctions a prejudice. Therefore do I insist, especially for

the sake of children, for the sake of those tender years most susceptible to human influence, that we should banish a rule which will make them grow up with a separation which will be to them a burden: a burden to the white; for every prejudice is a burden to him who has it; and a burden to the black, who will suffer always under the degradation.

With what consistency can you deny to the child equal rights in the school-room and then give him equal rights at the ballot-box? Having already accorded equal rights at the ballot-box, I insist upon his equal right in the school-room also. One is the complement of the other. It is not enough to give him a separate school, where he may have the same kind of education with the white child. He will not have the same kind of education. Every child, white or black, has a right to be placed under precisely the same influences, with the same teachers, in the same school-room, without any discrimination founded on his color. You disown distinctions of sect: why keep up those of color?

A great protection to the colored child, and a great assurance of his education, will be that he is educated on the same benches and by the same teachers with the white child. You may give him what is sometimes called an equivalent in another school; but this is not equality. His right is to equality, and not to equivalency. He has equality only when he comes into your common-school and finds no exclusion there on account of his skin.

Strike out this provision, and you will say to the children of this District: "There is a prejudice of color which we sanction; continue it; grow up with it in

your souls." And worse still, the prejudice which you sanction will extend from this centre over the whole country. This is a centre, and not a corner. What we do here will be an example in distant places.

My friend says that this provision will hurt the schools. Pardon me; he is mistaken. It will help the schools. Everything that brings the schools into harmony with great principles and with divine truth must help them. Anything that makes them antagonistic to great principles and to divine truth hurts them. Strike out this provision, and you hurt them seriously, vitally, — you stab them here in the house of their friends. In a bill to promote education you deal it a fatal blow.

Sir, as I cherish education, as I love freedom, as at all times I stand by human rights, so do I cherish, love, and stand by this safeguard. It is worth the whole bill. Strike it out, and the bill is too poor to be adopted. If it should be passed, thus shorn, — I say it, Sir, because I must say it, — it will bring disgrace upon Congress.

To the colored people here we owe, certainly, equality; we owe to them the practical recognition of the promises of the Declaration of Independence; and still further, we must see that the common schools of this District are an example throughout the country. We cannot afford to do less. Everywhere throughout the region lately cursed by Slavery this dark prejudice still lingers and lowers. From our vantage-ground here we must strike it, and, according to our power, destroy it. But if the proposition of my friend prevails, you will encourage and foster it.

Now, Sir, against the statement of my friend, the Chairman, I oppose the statement of experts, — I oppose a statement which, I venture to say here, cannot

be answered. It is not my statement. I should not venture to say anything like that of anything that I said. I oppose a Report made by the Trustees of the Colored Schools in Washington, and I ask the attention of the Senate to what I read. It is a Report made to the Secretary of the Interior, December 31, 1870, and communicated to the Senate by the Secretary, January 18, 1871.[1] Under the head of "Need of Additional Legislation" the Trustees of the Colored Schools express themselves as follows:—

"It is our judgment that the best interests of the colored people of this capital, and not theirs alone, but those of all classes, require the abrogation of all laws and institutions creating or tending to perpetuate distinctions based on color, and the enactment in their stead of such provisions as shall secure equal privileges to all classes of citizens. The laws creating the present system of separate schools for colored children in this District were enacted as a temporary expedient to meet a condition of things which has now passed away."[2]

How wise is that remark! These are colored men who wrote this. They say:—

"The laws creating the present system of separate schools for colored children in this District were enacted as a temporary expedient to meet a condition of things which has now passed away."

That condition of things was a part of the legacy of Slavery. They then proceed:—

"That they recognize and tend to perpetuate a cruel, unreasonable, and unchristian prejudice, which has been and is

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 20.
[2] Ibid., p. 7.

the source of untold wrong and injustice to that class of the community which we represent, is ample reason for their modification. The experience of this community for the last few years has fully demonstrated that the association of different races, in their daily occupations and civic duties, is as consistent with the general convenience as it is with justice. And custom is now fully reconciled at this capital to the seating side by side of white and colored people in the railway car, the jury-box, the municipal and Government offices, in the city councils, and even in the Halls of the two Houses of Congress. Yet, while the fathers may sit together in those high places of honor and trust, the children are required by law to be educated apart. We see neither reason nor justice in this discrimination. If the fathers are fit to associate, why are not the children equally so?" [1]

I should like my honorable friend, the Chairman, to answer that question, when I have finished this Report: "If the fathers are fit to associate, why are not the children equally so?" The Report then proceeds: —

"Children, naturally, are not affected by this prejudice of race or color. To educate them in separate schools tends to beget and intensify it in their young minds, and so to perpetuate it to future generations. If it is the intention of the United States that these children shall become citizens in fact, equal before the law with all others, why train them to recognize these unjust and impolitic distinctions?" [2]

Here I would interpose the further inquiry, Why will you make your school-house the nursery of prejudice inconsistent with the declared principles of your institutions? The Report proceeds: —

"To do so is not only contrary to reason, but also to the

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 20, p. 7.
[2] Ibid.

injunction of Scripture, which says, 'Train up a child in the way he should go, and when he is old he will not depart from it.'" [1]

And yet, could my friend prevail, he would train up a child in the way he should *not* go; but he would not, I know, encourage him in this prejudice. The Report proceeds:—

"Objection to the step here recommended has been made on the ground of expediency. Every advanced step in the same direction has been opposed on the same superficial allegation.

"The right of the colored man to ride in the railway cars, to cast the ballot, to sit on the jury, to hold office, and even to bear arms in defence of his country, has encountered the same objection. We are confident that it will prove of no greater weight in the present case than it has in the others. There is no argument for equality at the ballot-box, in the cars, on the jury, in holding office and bearing arms, which is not equally applicable in the present case. We may go further, and insist that equality in the other cases requires equality here; otherwise the whole system is incomplete and inharmonious." [2]

Now my friend, the Chairman, would make the system incomplete and inharmonious. He would continue here at the base that discord which he would be one of the last to recognize in the higher stages. The Report proceeds:—

"It is worthy of note in this connection, that some of the most distinguished men in literary, social, and political circles in this section of the country have recently, in setting forth

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 20, p. 7.
[2] Ibid.

their claims to be considered the best and truest friends of the people of color, taken pains to inform the public that they were reared with colored children, played with them in the sports of childhood, and were even suckled by colored nurses in infancy; hence, that no prejudice against color exists on their part. If this be so, then with what show of consistency or reason can they object to the children of both classes sitting side by side in school?

"That the custom of separation on account of color must disappear from our public schools, as it has from our halls of justice and of legislation, we regard as but a question of time. Whether this unjust, unreasonable, and unchristian discrimination against our children shall continue at the capital of this great Republic is for the wisdom of Congress to determine.

"We deem it proper to add, that a bill now before the honorable Senate, entitled 'A bill to secure equal rights in the public schools of Washington and Georgetown,' (Senate, No. 361, Forty-First Congress, Second Session,) reported to that body May 6, 1870, by Mr. Senator Sumner, meets our approbation. It is plain and simple, and prescribes the true rule of equality for our schools. This bill is in the nature of a 'corner-stone.'" [1]

This Report, so honorable to these Trustees, showing that they have a true appreciation of principle, also of what they owe to themselves and their race, and I trust also a true appreciation of what they may justly expect from Congress, concludes as follows: —

"In conclusion, the Trustees suggest that those equal educational advantages to which all children are entitled, in accordance with the great principle of Equality before the Law, can be obtained only through the common school, where all

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 20, pp. 7–8.

children meet together in the enjoyment of the same opportunities, the same improvements, and the same instructions. Whatever then is done for white children will be shared by their colored brethren, and all shall enjoy the same care and supervision." [1]

This is signed, "William Syphax, William H. A. Wormley, Trustees of Colored Schools."

There is then a Minority Report, signed, "Charles King, Trustee of Colored Schools of Washington and Georgetown," dissenting in some respects from the Majority Report, but coïnciding with it absolutely on this most important question. From the Minority Report I read as follows: —

"In reference to schools of mixed races I think a difference of opinion may exist among the real friends of the colored people; but the time is rapidly approaching when this discrimination must be obliterated all over our country, and I know of no better locality in which to make a beginning than in the District of Columbia, and no better time than the present." [2]

Sir, these are wise words. That is well put; whatever may be the difficulties elsewhere, they should not be allowed to prevail here. This member of the Board knows "no better locality in which to make a beginning than in the District of Columbia, and no better time than the present."

He then proceeds: —

"Let all discrimination on account of color be avoided in the public schools of Washington, let them be amply provided for in respect to funds and teachers, and a very few years will see the example followed all over our free country. The

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 20, p. 10.
[2] Ibid., p. 34.

colored race will feel the stimulating effects of direct competition with the white race, their ambition and self-respect will grow under its influence and add dignity to their character, and rapidly develop a style and type of manhood that must place them on an equality with any of the other races of men.

"We have seen this prejudice die out on the field of battle, where white and colored have fought together for the same flag. It has been met and conquered at the ballot-box and in the halls of our local and general Legislatures, and why should it not receive the same fate in our school-rooms? Why educate American youth in the idea that superiority exists in the color of the skin, when our Declaration of Independence, of which we boast so much, flatly contradicts it?"[1]

Now, Sir, I might well leave this whole question on this remarkable statement by these colored Trustees. They have spoken for themselves, for their race, and for us. Who can speak better? I know not if anything can be added to their Reports. I content myself with one further word, concluding as I began.

The Senator from New Hampshire finds the principle correct, but not practical. To that I say, Try it. Try the principle, and it will be found practical. It will work. Never was there any correct principle that would not work. I know it is sometimes said that white parents would not send their children to the schools. How long would that be? One week, two weeks, one month, two months. Some might do so possibly for a brief time, just as for a brief time white persons refused to enter the street cars when they were opened to colored persons. It did not last long. According to my

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 20, pp. 34–35.

experience, men are not in the habit of biting off their own noses for any very long time. Life is too short to prolong this process; and I do not believe that the people of the District of Columbia would reject for their children the advantages of the common schools simply because these schools were brought into harmony with the promises of the Declaration of Independence.

HON. JOHN COVODE, LATE REPRESENTATIVE OF PENNSYLVANIA.

SPEECH IN THE SENATE, ON HIS DEATH, FEBRUARY 10, 1871.

MR. PRESIDENT, — I venture to interpose a brief word of sincere homage to the late JOHN COVODE. I call him John Covode, for so I heard him called always. Others are known by some title of honor or office, but he was known only by the simple name he bore. This familiar designation harmonized with his unassuming life and character.

During his long service in Congress I was in the Senate, so that I have been his contemporary. And now that he has gone before me, I owe my testimony to the simplicity, integrity, and patriotism of his public life. Always simple, always honest, always patriotic, he leaves a name which must be preserved in the history of Congress. In the long list of its members he will stand forth with an individuality not to be forgotten. How constantly and indefatigably he toiled the records of the other House declare. He was a doer rather than a speaker; but is not doing more than speech, unless in those rare cases where a speech is an act? But his speech had a plainness not without effect, especially before the people, where the facts and figures which he presented with honest voice were eloquent.

The Rebellion found this faithful Representative in his place, and from the first moment to the last he gave to its suppression time, inexhaustible energy, and that infinite treasure, the life of a son. He was for the most vigorous measures, whether in the field or in statesmanship. Slavery had no sanctity for him, and he insisted upon striking it. So also, when the Rebellion was suppressed, he insisted always upon those Equal Rights for All, without which the Declaration of Independence is an unperformed promise, and our nation a political bankrupt. In all these things he showed character and became a practical leader. There is heroism elsewhere than on fields of battle, and he displayed it. He was a civic hero. And here the bitterness which he encountered was the tribute to his virtue.

In doing honor to this much-deserving servant, I cannot err, if I add that nobody had more at heart the welfare of the Republican Party, with which, in his judgment, were associated the best interests of the Nation. He felt, that, giving to his party, he gave to his country and to mankind. His strong sense and the completeness of his devotion to party made him strenuous always for those commanding principles by which Humanity is advanced. Therefore was he for the unity of the party, that it might be directed with all its force for the good cause. Therefore was he against outside and disturbing questions, calculated to distract and divide. He saw the wrong they did to the party, and, in the relation of cause and effect, to the country. And here that frankness which was part of his nature became a power. He was always frank, whether with the people, with Congress, or with the President. I cannot

forget his frankness with Abraham Lincoln, who, you know, liked frankness. On more than one occasion, with this good President his frankness conquered. Honorable as was such a victory to the simple Representative, it was more honorable to the President.

His honest indignation at wrong was doubtless quickened by the blood which coursed in his veins and the story which it constantly whispered. He was descended from one of those "Redemptioners," or indented servants, transported to Pennsylvania in the middle of the last century, being a species of white slaves, among whom was one of the signers of the Declaration of Independence. The eminence which John Covode reached attests the hospitality of our institutions, and shows how character triumphs over difficulties. With nothing but a common education, he improved his condition, gained riches, enlarged his mind with wisdom, and won the confidence of his fellow-citizens, until he became an example.

The death of such a citizen makes a void, but it leaves behind a life which in itself is a monument.

ITALIAN UNITY AGAIN.

LETTER TO A PUBLIC MEETING AT PITTSBURG, PENNSYLVANIA, FEBRUARY 21, 1871.

WASHINGTON, February 21, 1871.

DEAR SIR, — I cannot be at your meeting, but there will be none among you to rejoice in Italian Unity more than I do. Long has it been a desire of my heart.

May it stand firm against all its enemies, especially its greatest enemy, the temporal autocracy of the Pope!

Faithfully yours,

CHARLES SUMNER.

FELIX R. BRUNOT, ESQ., Chairman.

VIOLATIONS OF INTERNATIONAL LAW, AND USURPATIONS OF WAR POWERS.

Speech in the Senate, on his San Domingo Resolutions, March 27, 1871.

The official returns to Mr. Sumner's resolutions of December 9, 1870, and February 15, 1871, calling for the documents in the State and Navy Departments relative to the case of San Domingo,[1] gave occasion to the introduction by him, March 24, 1871, of a series of resolutions, subsequently amended to read as follows: —

Resolutions regarding the employment of the Navy of the United States on the coasts of San Domingo during the pendency of negotiations for the acquisition of part of that island.

Whereas any negotiation by one nation with a people inferior in population and power, having in view the acquisition of territory, should be above all suspicion of influence from superior force, and in testimony to this principle Spain boasted that the reïncorporation of Dominica with her monarchy in 1861 was accomplished without the presence of a single Spanish ship on the coast or a Spanish soldier on the land, all of which appears in official documents; and whereas the United States, being a Republic founded on the Rights of Man, cannot depart from such a principle and such a precedent without weakening the obligations of justice between nations and inflicting a blow upon Republican Institutions: Therefore, —

1. *Resolved*, That in obedience to correct principle, and that Republican Institutions may not suffer, the naval forces of the United States should be withdrawn from the coasts of San Domingo during the pendency of negotiations for the acquisition of any part of that island.

2. *Resolved*, That every sentiment of justice is disturbed by the employment of foreign force in the maintenance of a ruler engaged in selling his country, and this moral repugnance is increased when it is known that the attempted sale is in violation of the Constitution of the country to be sold; that, therefore, the employment of our Navy to maintain Baez in usurped power while attempting to sell his country to the United States, in open

[1] See, *ante*, Vol. XVIII. pp. 259, 299.

violation of the Dominican Constitution, is morally wrong, and any transaction founded upon it must be null and void.

3. *Resolved*, That since the Equality of All Nations, without regard to population, size, or power, is an axiom of International Law, as the Equality of All Men is an axiom of our Declaration of Independence, nothing can be done to a small or weak nation that would not be done to a large or powerful nation, or that we would not allow to be done to ourselves; and therefore any treatment of the Republic of Hayti by the Navy of the United States inconsistent with this principle is an infraction of International Law in one of its great safeguards, and should be disavowed by the Government of the United States.

4. *Resolved*, That since certain naval officers of the United States, commanding large war-ships, including the monitor Dictator and the frigate Severn, with powerful armaments, acting under instructions from the Executive, and without the authority of an Act of Congress, have entered one or more ports of the Republic of Hayti, a friendly nation, and under the menace of open and instant war have coerced and restrained that republic in its sovereignty and independence under International Law, — therefore, in justice to the Republic of Hayti, also in recognition of its equal rights in the Family of Nations, and in deference to the fundamental principles of our institutions, these hostile acts should be disavowed by the Government of the United States.

5. *Resolved*, That under the Constitution of the United States the power to declare war is placed under the safeguard of an Act of Congress; that the President alone cannot declare war; that this is a peculiar principle of our Government by which it is distinguished from monarchical Governments, where power to declare war, as also the treaty-making power, is in the Executive alone; that in pursuance of this principle the President cannot, by any act of his own, as by an unratified treaty, obtain any such power, and thus divest Congress of its control; and that therefore the employment of the Navy without the authority of Congress in acts of hostility against a friendly foreign nation, or in belligerent intervention in the affairs of a foreign nation, is an infraction of the Constitution of the United States, and a usurpation of power not conferred upon the President.

6. *Resolved*, That while the President, without any previous declaration of war by Act of Congress, may defend the country against invasion by foreign enemies, he is not justified in exercising the same power in an outlying foreign island, which has not yet become part of the United States; that a title under an unratified treaty is at most inchoate and contingent while it is created by the President alone, in which respect it differs from any such title created by Act of Congress; and since it is created by the President alone, without the support of law, whether in legislation or a ratified treaty, the employment of the Navy in the maintenance of the Government there is without any excuse of national defence, as also without any excuse of a previous declaration of war by Congress.

7. *Resolved*, That whatever may be the title to territory under an unratified treaty, it is positive that after the failure of the treaty in the Senate all pretext of title ceases, so that our Government is in all respects a stranger to the territory, without excuse or apology for any interference against its enemies, foreign or domestic; and therefore any belligerent intervention or act of war on the coasts of San Domingo after the failure of the Dominican treaty in the Senate is unauthorized violence, utterly without support in law or reason, and proceeding directly from that kingly prerogative which is disowned by the Constitution of the United States.

8. *Resolved*, That in any proceedings for the acquisition of part of the island of San Domingo, whatever may be its temptations of soil, climate, and productions, there must be no exercise of influence by superior force, nor any violation of Public Law, whether International or Constitutional; and therefore the present proceedings, which have been conducted at great cost of money, under the constant shadow of superior force, and through the belligerent intervention of our Navy, acting in violation of International Law, and initiating war without an Act of Congress, must be abandoned, to the end that justice may be maintained, and that proceedings so adverse to correct principles may not become an example for the future.

9. *Resolved*, That, instead of seeking to acquire part of the island of San Domingo by belligerent intervention without the authority of an Act of Congress, it would have been in better accord with the principles of our Republic and its mission of peace and beneficence, had our Government, in the spirit of good neighborhood and by friendly appeal, instead of belligerent intervention, striven for the establishment of tranquillity throughout the whole island, so that the internal dissensions of Dominica and its disturbed relations with Hayti might be brought to a close, thus obtaining that security which is the first condition of prosperity, all of which, being in the nature of good offices, would have been without any violation of International Law, and without any usurpation of War Powers under the Constitution of the United States.

On these Resolutions Mr. Sumner, March 27th, spoke as follows: —

MR. PRESIDENT, — Entering again upon this discussion, I perform a duty which cannot be avoided. I wish it were otherwise, but duty is a taskmaster to be obeyed. On evidence now before the Senate, it is plain that the Navy of the United States, acting under orders from Washington, has been engaged in measures of violence and of belligerent intervention, being war without the authority of Congress. An act of war without the authority of Congress is no common

event. This is the simplest statement of the case. The whole business is aggravated, when it is considered that the declared object of this violence is the acquisition of foreign territory, being half an island in the Caribbean Sea, — and still further, that this violence has been employed, first, to prop and maintain a weak ruler, himself a usurper, upholding him in power that he might sell his country, and, secondly, to menace the Black Republic of Hayti.

Such a case cannot pass without inquiry. It is too grave for silence. For the sake of the Navy, which has been the agent, for the sake of the Administration, under which the Navy acted, for the sake of Republican Institutions, which suffer when the Great Republic makes itself a pattern of violence, and for the sake of the Republican Party, which cannot afford to become responsible for such conduct, the case must be examined on the facts and the law, and also in the light of precedent, so far as precedent holds its torch. When I speak for Republican Institutions, it is because I would not have our great example weakened before the world, and our good name tarnished. And when I speak for the Republican Party, it is because from the beginning I have been the faithful servant of that party and aspire to see it strong and triumphant. But beyond all these considerations is the commanding rule of Justice, which cannot be disobeyed with impunity.

THE QUESTION STATED.

THE question which I present is very simple. It is not, whether the acquisition of the island of San Domingo, in whole or part, with a population foreign in

origin, language, and institutions, is desirable, but whether we are justified in the means employed to accomplish this acquisition. The question is essentially preliminary in character, and entirely independent of the main question. On the main question there may be difference of opinion: some thinking the acquisition desirable, and others not desirable; some anxious for empire, or at least a *sanitarium*, in the tropics, — and others more anxious for a Black Republic, where the African race shall show an example of self-government by which the whole race may be uplifted; some thinking of gold mines, salt mountains, hogsheads of sugar, bags of coffee, and boxes of cigars, — others thinking more of what we owe to the African race. But whatever the difference of opinion on the main question, the evidence now before us shows too clearly that means have been employed which cannot be justified. And this is the question to which I now ask the attention of the Senate.

REASON FOR INTEREST IN THE QUESTION.

Here, Sir, I venture to relate how and at what time I became specially aroused on this question. The treaty for the annexion of the Dominican people was pending before the Senate, and I was occupied in considering it, asking two questions: first, Is it good for us? and, secondly, Is it good for them? The more I meditated these two questions I found myself forgetting the former and considering the latter, — or rather, the former was absorbed in the latter. Thinking of our giant strength, my anxiety increased for the weaker party, and I thought more of what was good for them than for

us. Is annexion good for them? This was the question on my mind, when I was honored by a visit from the Assistant Secretary of State, bringing with him a handful of dispatches from San Domingo. Among these were dispatches from our Consular Agent there, who signed the treaty of annexion, from which it distinctly appeared that Baez, while engaged in selling his country, was maintained in power by the Navy of the United States. That such was the official report of our Consular Agent, who signed the treaty, there can be no question; and this official report was sustained by at least one other consular dispatch. I confess now my emotion as I read this painful revelation. Until then I had supposed the proceeding blameless, although precipitate. I had not imagined any such indefensible transgressions.

These dispatches became more important as testimony when it appeared that the writers were personally in favor of annexion. Thus, then, it stood, — that, on the official report of our own agents, we were engaged in forcing upon a weak people the sacrifice of their country. To me it was apparent at once that the acquisition of this foreign territory would not be respectable or even tolerable, unless by the consent of the people there, through rulers of their own choice, and without force on our part. The treaty was a contract, which, according to our own witnesses, was obtained through a ruler owing power to our war-ships. As such, it was beyond all question a contract obtained under duress, and therefore void, while the duress was an interference with the internal affairs of a foreign country, and therefore contrary to that principle of Non-Intervention which is now a rule of International Law. As this question presented itself, I lost no time in visiting the

Navy Department, in order to examine the instructions under which our naval officers were acting, and also their reports. Unhappily, these instructions and reports were too much in harmony with the other testimony; so that the State Department and Navy Department each contained the record of the deplorable proceedings, and still they pressed the consummation. I could not have believed it, had not the evidence been explicit. The story of Naboth's Vineyard was revived.

Violence begets violence, and that in San Domingo naturally extended. It is with nations as with individuals, — once stepped in, they go forward. The harsh menace by which the independence of the Black Republic was rudely assailed came next. It was another stage in belligerent intervention. As these things were unfolded, I felt that I could not hesitate. Here was a shocking wrong. It must be arrested; and to this end I have labored in good faith. If I am earnest, it is because I cannot see a wrong done without seeking to arrest it. Especially am I moved, if this wrong be done to the weak and humble. Then, by the efforts of my life and the commission I have received from Massachusetts, am I vowed to do what I can for the protection and elevation of the African race. If I can help them, I will; if I can save them from outrage, I must. And never before was the occasion more imminent than now.

CONTRACT FOR CESSION OF TERRITORY.

I SPEAK only according to unquestionable reason and the instincts of the human heart, when I assert that a contract for the cession of territory must be fair and without suspicion of overawing force. Nobody can

doubt this rule, whether for individuals or nations. And where one party is more powerful than another it becomes more imperative. Especially must it be sacred with a Republic, for it is nothing but the mandate of Justice. The rule is general in its application; nay, more, it is part of Universal Law, common to all municipal systems and to International Law. Any departure from this requirement makes negotiation for the time impossible. Plainly there can be no cession of territory, and especially no surrender of national independence, except as the result of war, so long as hostile cannon are frowning. The first step in negotiation must be the withdrawal of all force, coercive or minatory.

BOAST OF SPAIN.

HERE the example of Spain furnishes a beacon-light. Yielding to an invitation not unlike that of Baez to the United States, this Ancient Monarchy was induced by Santana, President of Dominica, to entertain the proposition of reannexion to the Crown. Here let it be remarked that Santana was legitimate President, while Baez is a usurping Dictator. And now mark the contrast between the Ancient Monarchy and our Republic, as attested in documents. Spain boasted, in official papers, that in the act of reannexion the Dominicans were spontaneous, free, and unanimous, — that no Spanish emissaries were in the territory to influence its people, nor was there a Spanish bottom in its waters or a Spanish soldier on its land. On the question whether this boast was justified by historic facts I say nothing. My purpose is accomplished, when I show, that, in self-defence and for the good name of Spain, it was necessary

to make this boast. Unhappily, no such boast can be made now. American emissaries were in the territory, with Cazneau and Fabens as leaders, — while American war-ships, including the Dictator, our most powerful monitor, properly named for the service, were in the waters with guns pointed at the people to be annexed, and American soldiers with bayonets glancing in the sun were on the decks of these war-ships, if not on the land. The contrast is complete. In the case of Spain the proceeding was an act of peace; in our case it is an act of war. The two cases are as wide asunder as peace and war.

All must feel the importance of this statement, which, I have to say, is not without official authority. I now hold in my hand the Spanish documents relating to the reannexion of Dominica, as published by the Cortes, and with your permission I will open these authentic pages. And here allow me to say that I speak only according to the documents. That Spain made the boast attests the principle.

Omitting particularities and coming at once to the precise point, I read from a circular by the Spanish Minister of Foreign Affairs, addressed to diplomatic agents abroad, under date of Aranjuez, April 25, 1861, which declares the proper forbearance and caution of Spain, and establishes a precedent from which there can be no appeal: —

"The first condition, necessary and indispensable, which the Government of her Majesty requires in accepting the consequences of these events, is that the act of reincorporation of San Domingo with the Spanish Monarchy shall be the unanimous, spontaneous, and explicit expression of the will of the Dominicans."

The dispatch then proceeds to describe the attitude of the Spanish Government. And here it says of the events in Dominica:—

"Nor have they been the work of Spanish emigrants who have penetrated the territory of San Domingo; nor has the superior authority of Havana, nor the forces of sea and land at its disposition, contributed to them. The Captain-General of Cuba has not separated himself, nor could he depart for a moment, from the principles of the Government, and from the policy which it has followed with regard to them. *Not a Spanish bottom or soldier was on the coast or in the territory of the Republic* when the latter by a unanimous movement proclaimed its reunion to Spain."[1]

It will be observed with what energy of phrase the Spanish Minister excludes all suspicion of force on the part of Spain. Not only was there no Spanish ship on the coast, but not a single Spanish bottom. And then it is alleged that "the first condition" of reannexion must be "the unanimous, spontaneous, and explicit expression of the will of the Dominicans." No foreign influence, no Spanish influence, was to interfere with the popular will. But this is nothing more than justice. Anything else is wrong.

The Spanish Government, not content with announcing this important rule in the dispatch which I have quoted, return to it in another similar dispatch, dated at Madrid, 26th May, 1861, as follows:—

"The Government of the Queen, before adopting a definitive resolution on this question, sought to acquire absolute assurance that the votes of the Dominican people had been spontaneous, free, and unanimous. The reception of the

[1] Sesiones de Cortes, 14 Nov., 1861, Vol. I. Apend. VI. al Núm. 4, p. 7.

proclamation of the Queen as sovereign in all the villages of the territory of San Domingo proves *the spontaneousness and the unanimity of the movement.*" [1]

Here again is the allegation that the movement was spontaneous and unanimous, and that the Spanish Government sought to acquire absolute assurance on this essential point. This was openly recognized as the condition-precedent; and I cite it as unanswerable testimony to what was deemed essential.

On this absolute assurance the Ministers laid before the Queen in Council a decree of reannexion, with an explanatory paper, under date of 19th May, 1861, where the unanimity of the Dominican people is again asserted, and also the absence of any influence on the part of Spain: —

"Everywhere was manifested jubilee and enthusiasm in a manner unequivocal and solemn. The public authorities, following their own impulses, have obeyed the sentiment of the country, which has put its trust in them. Rarely has been seen such a concurrence, such a unanimity of wills to realize an idea, a common thought. *And all this, without having on the coast of San Domingo a single bottom, nor on the territory a soldier of Spain.*" [2]

Such is the official record on which the decree of reannexion was adopted. Mark well, Sir, — a unanimous people, and not a single Spanish bottom on the coast or Spanish soldier on the territory.

[1] Sesiones de Cortes, 14 Nov., 1861, Vol. I. Apend. VI. al Núm. 4, p. 11.
[2] Ibid., p. 8.

CONTRAST BETWEEN SPAIN AND THE UNITED STATES.

AND now mark the contrast between the Old Monarchy and the Great Republic. The recent return of the Navy Department to the Senate, in reply to a resolution introduced by me, shows how the whole island has been beleaguered by our Navy, sailing from port to port, and hugging the land with its guns. Here is the return: —

"The following are the names of the vessels which have been in the waters of the island of San Domingo since the commencement of the negotiations with Dominica, with their armaments: —

"Severn, — 14 9-inch and 1 60-pounder rifle.

"Congress, — 14 9-inch and 2 60-pounder rifles.

"Nantasket, — 6 32-pounders, 4,500 pounds; 1 60-pounder rifle.

"Swatara, — 6 32-pounders, 4,500 pounds; 1 11-inch.

"Yantic, — 1 11-inch and 2 9-inch.

"Dictator, — 2 15-inch.

"Saugus, — 2 15-inch.

"Terror, — 4 15-inch.

"Albany, — 14 9-inch and 1 60-pounder rifle.

"Nipsic, — 1 11-inch and 2 9-inch.

"Seminole, — 1 11-inch and 4 32-pounders of 4,200 pounds.

"Tennessee, — On spar-deck 2 11-inch, 2 9-inch, 2 100-pounders, and 1 60-pounder; on gun-deck, 16 9-inch.

"The ships now [February 17, 1871] in those waters are, as far as is known to the Department, the Congress, the Nantasket, the Yantic, and the Tennessee."[1]

Twelve mighty war-ships, including two, if not three, powerful monitors, maintained at the cost of millions of

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 45, p. 3.

dollars, being part of the price of the pending negotiation. Besides what we pay to Baez, here are millions down. Rarely have we had such a fleet in any waters: not in the Mediterranean, not in the Pacific, not in the East Indies. It is in the waters of San Domingo that our Navy finds its chosen field. Here is its flag, and here also is its frown. And why this array? If our purpose is peace, why these engines of war? If we seek annexion by the declared will of the people, spontaneous, free, and unanimous, as was the boast of Spain, why these floating batteries to overawe them? If we would do good to the African race, why begin with violence to the Black Republic?

Before the Commissioners left our shores, there were already three war-ships with powerful armaments in those waters: the Congress, with fourteen 9-inch guns and two 60-pounder rifles; the Nantasket, with six 32-pounders of 4,500 pounds, and one 60-pounder rifle; and the Yantic, with one 11-inch gun and two 9-inch. And then came the Tennessee, with two 11-inch and two 9-inch guns, two 100-pounders and one 60-pounder, on its spar-deck, and sixteen 9-inch guns on its gun-deck, to augment these forces, already disproportioned to any proper object. The Commissioners are announced as ministers of peace; at all events, their declared duty is to ascertain the real sentiments of the people. Why send them in a war-ship? Why cram the dove into a cannon's mouth? There are good steamers at New York, safe and sea-worthy, whose presence would not swell the array of war, nor subject the Great Republic to the grave imputation of seeking to accomplish its purpose by violence.

TRAGICAL END OF SPANISH OCCUPATION.

If while negotiating with the Dominicans for their territory, and what is more than territory, their national life, you will not follow Spanish example and withdraw your war-ships with their flashing arms and threatening thunder, at least be taught by the tragedy which attended even this most propitious attempt. The same volumes of authentic documents from which I have read show how, notwithstanding the apparent spontaneousness, freedom, and unanimity of the invitation, the forbearance of Spain was followed by resistance, where sun and climate united with the people. An official report laid before the Cortes describes nine thousand Spanish soldiers dead with disease, while the Spanish occupation was reduced to three towns on the seaboard, and it was perilous for small parties to go any distance outside the walls of the City of San Domingo. The same report declares that twenty thousand troops, provided for a campaign of six months, would be required to penetrate "the heart of Cibao," — more accessible than the region occupied by General Cabral, who disputes the power of Baez. At last Spain submitted. The spirit of independence prevailed once more on the island; and the proud banner of Castile, which had come in peace, amid general congratulations, and with the boast of not a Spanish bottom or Spanish soldier near, was withdrawn.

AN ENGLISH PRECEDENT.

The example of Spain is reinforced by an English precedent, where may be seen in the light of analogy

the true rule of conduct. By a statute of the last century, all soldiers quartered at the place of an election for members of Parliament were removed, at least one day before the election, to the distance of two miles or more;[1] and though this statute has been modified latterly, the principle is preserved. No soldier within two miles of a place of election is allowed to go out of the barracks or quarters in which he is stationed, unless to mount or relieve guard or to vote.[2] This safeguard of elections is vindicated by the great commentator, Sir William Blackstone, when he says, "It is essential to the very being of Parliament that elections should be *absolutely free;* therefore all undue influences upon the electors are illegal and strongly prohibited."[3] In accordance with this principle, as early as 1794, a committee of the other House of Congress reported against the seat of a Representative partly on the ground that United States troops were quartered near the place of election and were marched in a body several times round the court-house.[4] And now that an election is to occur in Dominica, where National Independence is the question, nothing is clearer than that it should be, in the language of Blackstone, "absolutely free," and to this end all naval force should be withdrawn at least until the "election" is determined.

NICE AND SAVOY.

In harmony with this rule, when Nice and Savoy voted on the question of annexion to France, the French

[1] 8 Geo. II. c. 30.

[2] 10 & 11 Vict. c. 21.

[3] Commentaries, I. 178.

[4] Triggs *v.* Preston: Clarke and Hall, Cases of Contested Elections in Congress, pp. 78–80.

army was punctiliously withdrawn from the borders, — all of which was in simple obedience to International Ethics; but, instead of any such obedience, our war-ships have hovered with constant menace on the whole coast.

SEIZURE OF WAR POWERS BY OUR GOVERNMENT.

All this is preliminary, although pointing the way to a just conclusion. Only when we enter into details and consider what has been done by our Government, do we recognize the magnitude of the question. Unless the evidence supplied by the agents of our Government is at fault, unless the reports of the State Department and Navy Department are discredited, it is obvious beyond doubt, most painfully plain and indisputable, that the President has seized the war powers carefully guarded by the Constitution, and without the authority of Congress has employed them to trample on the independence and equal rights of two nations coequal with ours, — unless, to carry out this project of territorial acquisition, you begin by setting at defiance a first principle of International Law. This is no hasty or idle allegation; nor is it made without immeasurable regret. And the regret is increased by the very strength of the evidence, which is strictly official and beyond all question.

BAEZ, THE USURPER.

In this melancholy business the central figure is Buenaventura Baez, — unless we except President Grant, to whom some would accord the place of honor. The two have acted together as copartners. To appreciate

the case, and especially to comprehend the breach of Public Law, you must know something of the former, and how he has been enabled to play his part. Dominican by birth, with much of Spanish blood, and with a French education, he is a cross where these different elements are somewhat rudely intermixed. One in whom I have entire confidence describes him, in a letter to myself, as "the worst man living of whom he has any personal knowledge"; and he adds, that so must say "every honest and honorable man who knows his history and his character." All his life he has been adventurer, conspirator, and trickster, uncertain in opinions, without character, without patriotism, without truth, looking out supremely for himself, and on any side according to imagined personal interest, being once violent against the United States as he now professes to be for them.

By the influence of General Santana, Baez obtained his first election as President in 1849; and in 1856, contrary to a positive provision of the Constitution against a second term except after the intervention of an entire term, he managed by fraud and intrigue to obtain another lease of power. Beginning thus early his violations of the Constitution, he became an expert. But the people rose against him, and he was driven to find shelter within the walls of the city. He had never been friendly to the United States, and at this time was especially abusive. His capitulation soon followed, and after a year of usurped power he left for France. Santana succeeded to the Presidency, and under him in 1861 the country was reincorporated with Spain, amidst the prevailing enthusiasm of the people. Anxious to propitiate the different political chiefs, the Spanish Government

offered Baez a major-general's commission in the Army, on condition that he should remain in Europe, which he accepted. For some time there was peace in Dominica, when the people, under the lead of the patriot Cabral, rose against the Spanish power. During this protracted period of revolution, while the patriotism of the country was stirred to its inmost depths, the Dominican adventurer clung to his Spanish commission with its honors and emoluments, not parting with them until after the Cortes at Madrid had renounced the country and ordered its evacuation; and then, in his letter of resignation addressed to the Queen, under date of June 15, 1865, he again outraged the feelings of his countrymen by declaring his regret at the failure of annexion to Spain, and his "regard for her august person and the noble Spanish nation," against whose arms they had been fighting for Independence. Losing his Spanish honors and emoluments, the adventurer was at once changed into a conspirator, being always a trickster, and from his European retreat began his machinations for power. Are we not told by the proverb that the Devil has a long arm?

On the disappearance of the Spanish flag, Cabral became Protector, and a National Convention was summoned to frame a Constitution and to organize a new Government. The people were largely in favor of Cabral, when armed men, in the name of Baez, and stimulated by his emissaries, overwhelmed the Assembly with violence, forcing the conspirator into power. Cabral, who seems to have been always prudent and humane, anxious to avoid bloodshed, and thinking that his considerable European residence might have improved the usurper, consented to accept a place in

the Cabinet, which was inaugurated December 8, 1865. Ill-gotten power is short-lived; revolution soon began, and in the month of May, 1866, Baez, after first finding asylum in the French Consulate, fled to foreign parts.

The official journal of San Domingo, "El Monitor," (June 2, 1866,) now before me, shows how the fugitive tyrant was regarded at this time. In the leading article it is said:—

"The administration of General Buenaventura Baez has just fallen under the weight of a great revolution, in which figure the principal notabilities of the country. A spontaneous cry, which may be called national, because it has risen from the depths of the majority, reveals the proportions of the movement, its character, and its legitimacy."

Then follows in the same journal a manifesto signed by the principal inhabitants of Dominica, where are set forth with much particularity the grounds of his overthrow, alleging that he became President not by the free and spontaneous choice of the people, but was imposed upon the nation by an armed movement; that he treated the chief magistracy as if it were his own patrimony, and monopolized for himself and his brothers all the lucrative enterprises of the country without regard to the public advantage; that, instead of recognizing the merit of those who had by their sacrifices served their country, he degraded, imprisoned, and banished them; that, in violation of the immunity belonging to members of the Constituent Assembly, he sent them to a most horrible prison,—and here numerous persons are named; that, without any judicial proceedings, contrary to the Constitution, and in the spirit of vengeance, he shut up many deserving men in obscure dungeons,—

and here also are many names; that, since his occupation of the Presidency, he has kept the capital in constant alarm, and has established a system of terrorism in the bosom of the national representation. All this and much more will be found in this manifesto. There is also a manifesto of Cabral, assigning at still greater length reasons for the overthrow of Baez, and holding him up as the enemy of peace and union; also a manifesto by the Triumvirate constituting the Provisional Government, declaring his infractions of the Constitution; also a manifesto from the general in command at the City of San Domingo, where, after denouncing the misdeeds of one man, it says, "This man, this monster, this speculator, this tyrant, is the General Buenaventura Baez."

Soon after the disappearance of Baez, his rival became legitimate President by the direct vote of the people, according to the requirement of the Constitution. Different numbers of the official journal now before me contain the election returns in September, 1866, where the name of General José María Cabral appears at the head of the poll. This is memorable as the first time in the history of Dominica that a question was submitted to the direct vote of the people. By that direct vote Cabral became President, and peace ensued. Since then there has been no election; so that this was last as well as first, leaving Cabral the last legitimate President.

During his enforced exile, Baez found his way to Washington. Mr. Seward declined to see him, but referred him to me. I had several conversations with him at my house. His avowed object was to obtain money and arms to aid him in the overthrow of the

existing Government. Be assured, Mr. President, he obtained no encouragement from me, — although I did not hesitate to say, as I always have said, that I hoped my country would never fail to do all possible good to Dominica, extending to it a helping hand. It was at a later day that belligerent intervention began.

Meanwhile Cabral, embarrassed by financial difficulties and a dead weight of paper money, the legacy of the fugitive conspirator, turned to the United States for assistance, offering a lease of the Bay of Samana. Then spoke Baez from his retreat, denouncing what he called "the sale of his country to the United States," adopting the most inflammatory language. By his far-reaching and unscrupulous activity a hostile force was organized, which, with the help of Salnave, the late ruler of Hayti, compelled the capitulation of Cabral, February 8, 1868. A Convention was appointed, not elected, which proceeded to nominate Baez for the term of four years, not as President, but as Dictator. Declining the latter title, the triumphant conspirator accepted that of *Gran Ciudadano*, or Grand Citizen, with unlimited powers. At the same time his enemies were driven into exile. The prisons were gorged, and the most respectable citizens were his victims. Naturally such a man would sell his country. Wanting money, he cared little how it was got. Anything for money, even his country.

ORIGIN OF THE SCHEME.

Cabral withdrew to the interior, keeping up a menace of war, while the country was indignant with the unscrupulous usurper, who for the second time obtained power by violence. Power thus obtained was naturally

uncertain, and Baez soon found himself obliged to invoke foreign assistance. "Help me, Cassius, or I sink!" cried the Grand Citizen. European powers would not listen. None of them wanted his half-island, — not Spain, not France, not England. None would take it. But still the Grand Citizen cried, when at last he was relieved by an answering voice from our Republic. A young officer, inexperienced in life, ignorant of the world, untaught in the Spanish language, unversed in International Law, knowing absolutely nothing of the intercourse between nations, and unconscious of the Constitution of his country, was selected by the President to answer the cry of the Grand Citizen. I wish that I could say something better of General Babcock; but if I spoke according to the evidence, much from his own lips, the portraiture would be more painful, and his unfitness more manifest. In closest association with Baez, and with profitable concessions not easy to measure, was the American Cazneau, known as disloyal to our country, and so thoroughly suspected that the military missionary, before leaving Washington, was expressly warned against him; but like seeks like, and he at once rushed into the embrace of the selfish speculator, who boasted that "no one American had been more intimately connected with the Samana and annexation negotiations, from their inception to their close, than himself," — and who did not hesitate to instruct Baez that it was not only his right, but duty, to keep an American citizen in prison "to serve and protect negotiations in which our President was so deeply interested," which he denominates "the great business in hand."[1]

[1] Letters to Perry and Babcock, — Report on the Memorial of Davis Hatch, pp. 90, 136: Senate Reports, 41st Cong. 2d Sess., No. 234.

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By the side of Cazneau was Fabens, also a speculator and life-long intriguer, afterwards Envoy Extraordinary and Minister Plenipotentiary of Baez in "the great business." Sparing details, which would make the picture more sombre, I come at once to the conclusion. A treaty was signed by which the usurper pretended to sell his country to the United States in consideration of $1,500,000; also another treaty leasing the Bay of Samana for an annual rent of $150,000. The latter sum was paid down by the young plenipotentiary, or $100,000 in cash and $50,000 in muskets and a battery. No longer able to pocket the doubloons of Spain, the usurper sought to pocket our eagles, and not content with muskets and a battery to be used against his indignant fellow-countrymen, obtained the Navy of the United States to maintain him in his treason. It was a plot worthy of the hardened conspirator and his well-tried confederates.

OPEN INFRACTION OF THE DOMINICAN CONSTITUTION.

THE case was aggravated by the open infraction of the Constitution of Dominica with which it proceeded. By that Constitution, adopted 27th September, 1866, a copy of which is now before me, it is solemnly declared that "neither the whole nor part of the territory of the Republic can ever be alienated," while the President takes the following oath of office: "I swear by God and the Holy Gospels to observe and cause to be observed the Constitution and the Laws of the Dominican People, to respect their rights, and to maintain the National Independence." The Constitution of 1865 had said simply, "*No part* of the territory of the Republic

can ever be alienated"; but now, as if anticipating recent events, it was declared, "*Neither the whole* nor part," — thus explicitly excluding the power exercised. All this was set aside while the plot went on. Even if Baez defied the Constitution of his country, our Government, in dealing with him, could not do so. In negotiation with another power, the Great Republic, which is an example to nations, cannot be insensible to the restrictions imposed by the Constitution of the contracting party; and this duty becomes stronger from the very weakness of the other side. Defied by the Dominican usurper, all these restrictions must be sacredly regarded by us. Than this nothing can be clearer in International Ethics; but the rule of Law is like that of Ethics. Ancient Rome, speaking in the text of Ulpian, says: "He who contracts with another either knows or ought to know his condition," — *Qui cum alio contrahit vel est vel* DEBET *esse non ignarus conditionis ejus;*[1] and this rule has the authority of Wheaton as part of International Law.[2] Another writer gives to it this practical statement, precisely applicable to the present case: "Nevertheless, in order to make such transfer valid, the authority, whether *de facto* or *de jure*, must be competent to bind the State. Hence the necessity of examining into and ascertaining the powers of the rulers, as the municipal constitutions of different states throw many difficulties in the way of alienations of their public property, *and particularly of their territory.*"[3] Thus, according to International Law, as expounded by American authority, was this treaty forbidden.

[1] Digest. Lib. L. Tit. xvii.: *De diversis regulis juris antiqui*, 19.

[2] Elements of International Law, Part III. Ch. 2, § 6, ed. Lawrence; § 266, ed. Dana.

[3] Halleck, International Law, Ch. VI. § 9.

Treaties negotiated in violation of the Dominican Constitution and of International Law were to be maintained at all hazards, even that last terrible hazard of war; nor was Public Law in any of its forms, Constitutional or International, allowed to stand in the way. The War Powers, so carefully guarded in every Republican Government, and so jealously defended against the One-Man Power, were instantly seized, in open violation of the Constitution of the United States, which was as little regarded as that of Dominica, while the Law of Nations in its most commanding principles was set at defiance: all of which appears too plainly on the facts.

ALLEGATIONS IN FORMER SPEECH NOW REPEATED.

When last I had the honor of addressing the Senate on this grave question, you will remember, Sir, my twofold allegation: first, that the usurper Baez was maintained in power by our Navy to enable him to carry out the sale of his country; and, secondly, that further to assure this sale the neighbor Republic of Hayti was violently menaced by an admiral of our fleet, — both acts being unquestionable breaches of Public Law, Constitutional and International. That these allegations were beyond question, at least by our Government, I knew well at the time, for I had the official evidence on my table; but I was unable to use it. Since then it has been communicated to the Senate. What I then asserted on my own authority I now present on documentary evidence. My witnesses are the officers of the Government and their official declarations. Let the country judge if I was not right in every word that I then employed. And still further, let the country

judge if the time has not come to cry "Halt!" in this business, which already has the front of war.

WAR.

WAR, Sir, is the saddest chapter of history. It is known as "the last reason of kings." Alas, that it should ever be the reason of a Republic! "There can be no such thing, my Lords, as a little war for a great nation," was the exclamation of the Duke of Wellington,[1] which I heard from his own lips, as he protested against what to some seemed petty. Gathering all the vigor of his venerable form, the warrior seasoned in a hundred fights cried out, and all within the sound of his voice felt the testimony. The reason is obvious. War, whether great or little, whether on the fields of France or the island of San Domingo, is war, over which hovers not only Death, but every demon of wrath. Nor is war merely conflict on a chosen field; it is force employed by one nation against another, or in the affairs of another, — as in the direct menace to Hayti, and the intermeddling between Baez and Cabral. There may be war without battle. Hercules conquered by manifest strength the moment he appeared on the ground, so that his club rested unused. And so our Navy has thus far conquered without a shot; but its presence in the waters of Hayti and Dominica was war.

TWO SOURCES OF TESTIMONY.

ALL this will be found under two different heads, or in two different sources: first, what is furnished by the

[1] Speech in the House of Lords, February 5, 1839: Times, Feb. 6th.

State Department, and, secondly, what is furnished by the Navy Department. These two Departments are witnesses, with their agents, confessing and acting. From the former we have confession; from the latter we have acts: confessions and acts all in harmony and supporting each other. I begin with the confession.

CONFESSION OF THE STATE DEPARTMENT.

In the strange report of the Secretary of State, responsive to a resolution moved by me in the Senate, the dependence of Baez upon our Navy is confessed in various forms. Nobody can read this document without noting the confession, first from the reluctant Secretary, and then from his agent.

Referring to the correspondence of Raymond H. Perry, our Commercial Agent at San Domingo, who signed the treaties, the Secretary presents a summary, which, though obnoxious to just criticism, is a confession. According to him, the correspondence "tends to show that the presence of a United States man-of-war in the port was supposed to have *a peaceful influence.*"[1] The term "peaceful influence" is the pleonasm of the Secretary, confessing the maintenance of Baez in his usurpation. There is no such thing as stealing; "*convey* the wise it call"; and so with the Secretary the maintenance of a usurper by our war-ships is only "a peaceful influence." A discovery of the Secretary. But in the levity of his statement the Secretary forgets that a United States man-of-war has nothing to do within a foreign jurisdiction, and cannot exert influence there without unlawful intervention.

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 17, p. 12.

The Secretary alludes also to the probability of "another revolution," of course against Baez, in the event of the failure of the annexion plot; and here is another confession of the dependence of the usurper upon our Navy.

But the correspondence of Mr. Perry, as communicated to the Senate, shows more plainly than the confession of the Secretary how completely the usurper was maintained in power by the strong arm of the United States.

The anxiety of the usurper was betrayed at an early day, even while vaunting the popular enthusiasm for annexion. In a dispatch dated at San Domingo, January 20, 1870, Mr. Perry thus reports: —

"The Nantasket left this port January 1, 1870, and we have not heard from her since. She was to go to Puerto Plata [a port of Dominica] and return *viâ* Samana Bay [also in Dominica]. *We need the protection of a man-of-war very much*, but anticipate her return very soon."[1]

Why the man-of-war was needed is easily inferred from what is said in the same dispatch: —

"The President tells me that it is almost impossible to prevent the people pronouncing for annexation before the proper time. *He prefers to await the arrival of a United States man-of-war before their opinion is publicly expressed.*"[2]

If the truth were told, the usurper felt that it was almost impossible to prevent the people from pronouncing for his overthrow, and therefore he wanted warships.

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 17, p. 104.
[2] Ibid.

Then under date of February 8, 1870, Mr. Perry reports again: —

"President Baez daily remarks that the United States Government has not kept its promises to send men-of-war to the coast. He seems very timid and lacks energy."[1]

The truth becomes still more apparent in the dispatch of February 20, 1870, — nearly three months after the signature of the treaties, and while they were still pending before the Senate, — where it is openly reported: —

"*If the United States ships were withdrawn, he* [Baez] *could not hold the reins of this Government.* I have told him this."[2]

Nothing can be plainer. In other words, the usurper was maintained in power by our guns. Such was the official communication of the very agent who had signed the treaties, and who was himself an ardent annexionist. Desiring annexion, he confesses the means employed to accomplish it. How the President did not at once abandon, unfinished, treaties maintained by violence, how the Secretary of State did not at once resign rather than be a party to this transaction, is beyond comprehension.

Nor was the State Department left uninformed with regard to the distribution of this naval force. Here is the report, under date of San Domingo, March 12, 1870, while the vote was proceeding: —

"The Severn lies at this port; the Swatara left for Samana the 9th; the Nantasket goes to Puerto Plata to-morrow, the 13th; the Yantic lies in the river in this city. Admiral Poor, on board the Severn, is expected to remain at this port

[1] Senate Reports, 41st Cong. 2d Sess. No. 234, p. 63.
[2] Executive Documents, 41st Cong. 3d Sess., Senate, No. 17, p. 105.

for some time. Everything is very quiet at present throughout the country." [1]

Thus under the guns of our Navy was quiet maintained, while Baez, like another usurper, exclaimed, "Now, by St. Paul, the work goes bravely on!"

What this same official reported to the State Department he afterward reaffirmed under oath, in his testimony before the committee of the Senate on the case of Mr. Hatch. The words were few, but decisive, touching the acts of our Navy, — "committed since we had been there, *protecting Baez from the citizens of San Domingo.*" [2]

Then, again, in a private letter to myself, under date of Bristol, Rhode Island, February 10, 1871, after stating that he had reported what the record shows to be true, "that Baez was sustained and held in power by the United States Navy," he adds, "This fact Baez acknowledged to me."

So that we have the confession of the Secretary of State, also the confession of his agent at San Domingo, and the confession of Baez himself, that the usurper depended for support on our Navy.

AN AMERICAN CITIZEN SACRIFICED TO HELP THE TREATY.

THIS drama of a usurper sustained by foreign power is illustrated by an episode, where the liberty of an American citizen was sacrificed to the consummation of the plot. It appears that Davis Hatch, of Norwalk, Connecticut, intimately known to one of the Senators of

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 17, p. 107.
[2] Senate Reports, 41st Cong. 2d Sess., No. 234, p. 195.

that State [Mr. FERRY] and respected by the other [Mr. BUCKINGHAM], lived in Dominica, engaged in business there, while Cabral was the legitimate President. During this time he wrote letters to a New York paper, in which he exposed the character of the conspirator Baez, then an exile. When the latter succeeded by violence in overthrowing the regular Government, one of his first acts was to arrest Mr. Hatch, on the ground that he had coöperated with Cabral. How utterly groundless was this charge appears by a letter to Baez from his own brother, governor of the province where the former resided,[1] and also by the testimony of Mr. Somers Smith, our Commercial Agent in San Domingo, who spoke and acted as became a representative of our country.[2] Read the correspondence and testimony candidly, and you will confess that the whole charge was trumped up to serve the purpose of the usurper.

Sparing all details of trial and pardon, where everything testifies against Baez, I come to the single decisive point, on which there can be no question, that, even after his formal pardon, Mr. Hatch was detained in prison by the authority of the usurper, at the special instance of Cazneau and with the connivance of Babcock, in order to prevent his influence against the treaty of annexion. The evidence is explicit and unanswerable. Gautier, the Minister of Baez, who had signed the treaty, in an official note to our representative, Mr. Raymond H. Perry, dated at San Domingo, February 19, 1870, and communicated to the State Department, says: "I desire that you will be good enough to assure his Excellency, the Secretary of State in Washington, that *the*

[1] Senate Reports, 41st Cong. 2d Sess., No. 234, p. 186.
[2] Ibid., pp. 1–3; 7–19; 148–163; 165.

prolonged sojourn of Mr. Hatch here has been only to prevent his hostile action in New York."[1] Nor is this all. Under the same date, Cazneau had the equal hardihood to write to Babcock, then at Washington, a similar version of the conspiracy, where, after denunciation of Perry as "embarrassing affairs here," in San Domingo, by his persistency in urging the release of Mr. Hatch, he relates, that, on occasion of a recent peremptory demand of this sort in his presence, Baez replied, that Hatch "would certainly make use of his liberty to join the enemies of annexation," and "that *a few weeks' restraint* would not be so inconvenient to him as his slanderous statements might become to *the success of General Grant's policy in the Antilles*," — and he adds, that he himself, in response to the simultaneous charge of "opposing the liberation of an innocent man," declared, that, in his opinion, "President Baez had the right, *and ought*, to do everything in his power *to serve and protect negotiations* in which our President was so deeply interested."[2] All this is clear, plain, and documentary. Nor is there any drawback or deduction on account of the character of Mr. Hatch, who, according to the best testimony, is an excellent citizen, enjoying the good-will and esteem of his neighbors at home, being respected there "as much as Governor Buckingham is in Norwich,"[3] — and we all know that no higher standard can be reached.

In other days it was said that the best government is where an injury to a single citizen is resented as an injury to the whole State. Here was an American citizen, declared by our representative to be "an innocent

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 17, p. 106.
[2] Senate Reports, 41st Cong. 2d Sess., No. 234, pp. 135-36.
[3] Ibid., p. 181.

man," and already pardoned for the crimes falsely alleged against him, incarcerated, or, according to the polite term of the Minister of Baez, compelled to a "prolonged sojourn," in order to assure the consummation of the plot for the acceptance of the treaty, or, in the words of Cazneau, "to serve and protect negotiations in which our President [Grant] was so deeply interested." The cry, "I am an American citizen," was nothing to Baez, nothing to Cazneau, nothing to Babcock. The young missionary heard the cry and answered not. Annexion was in peril. Annexion could not stand the testimony of Mr. Hatch, who would write in New York papers. Therefore was he doomed to a prison. Here again I forbear details, though at each point they testify. And yet the Great Republic, instead of spurning at once the heartless usurper who trampled on the liberty of an American citizen, and spurning the ill-omened treaty which required this sacrifice, continued to lend its strong arm in the maintenance of the trampler, while with unexampled assiduity it pressed the treaty upon a reluctant Senate.

CONFESSION OF THE STATE DEPARTMENT WITH REGARD TO HAYTI.

But intervention in Dominica is only one part of the story, even according to the confession of the State Department. Side by side with Dominica on the same tempting island is the Black Republic of Hayti, with a numerous population, which more than two generations ago achieved national independence, and at a later day, by the recognition of our Government, took its place under the Law of Nations as equal and peer of the

Great Republic. To all its paramount titles of Independence and Equality, sacred and unimpeachable, must be added its special character as an example of self-government, being the first in the history of the African race, and a promise of the future. Who can doubt that as such this Black Republic has a value beyond all the products of its teeming tropical soil? Like other Governments, not excepting our own, it has complications, domestic and foreign. Among the latter is chronic hostility with Dominica, arising from claims territorial and pecuniary. To these claims I refer without undertaking to consider their justice. It is enough that they exist. And here comes the wrong perpetuated by the Great Republic. In the effort to secure the much-coveted territory, our Government, not content with maintaining the usurper Baez in power, occupying the harbors of Dominica with the war-ships of the United States, sent other war-ships, being none other than our most powerful monitor, the Dictator, with the frigate Severn as consort, and with yet other monitors in their train, to menace the Black Republic by an act of war. An American admiral was found to do this thing, and an American minister, himself of African blood, was found to aid the admiral.

The dispatch of the Secretary of State instituting this act of war does not appear in his Report; but we are sufficiently enlightened by that of Mr. Bassett, our Minister Resident at Port-au-Prince, who, under date of February 17, 1870, informs the State Department in Washington that he had "transmitted to the Haytian Government notification that the United States asked and expected it to observe a strict neutrality in reference to the internal affairs of San Domingo"; and then,

with superserviceable alacrity, he lets the Department know that he communicated to Commander Owen, of the Seminole, reports that "persons in authority under the Haytian Government were planning clandestinely schemes for interference in San Domingo affairs."[1] But a moment of contrition seems to have overtaken the Minister; for he adds, that he did not regard these reports "as sufficiently reliable to make them the basis for a recommendation of *severe or extreme measures*."[2] Pray, by what title, Mr. Minister, could you recommend any such measures, being nothing less than war against the Black Republic? By what title could you launch these great thunders? The menacing note of the Minister was acknowledged by the Black Republic without one word of submission, — as also without one word of proper resentment.[3]

The officious Minister of the Great Republic reports to the State Department that he had addressed a diplomatic note to the Black Republic, under date of February 9, 1870, where, referring to the answer of the latter, he says, "It would nevertheless have been more satisfactory and agreeable to my Government *and myself*, if you, in speaking for your Government, had felt authorized to give assurance of the neutrality asked and expected by the United States."[4] This letter was written with the guns of the Dictator and Severn behind. It appears from the Minister's report, that these two warships arrived at the capital of the Black Republic on the morning of February 9th, when the Minister, as he says, "arranged for a formal call on the Haytian Gov-

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 17, p. 108.
[2] Ibid.
[3] Ibid., pp. 109-10.
[4] Ibid., p. 111.

ernment the same day." The Minister then records, and no blush appears on his paper, that "the Admiral availed himself of this visit to communicate, *quite pointedly*, to the President and his advisers the tenor of his instructions."[1] This assault upon the Independence and Equality of the Black Republic will appear more fully in the Report transmitted to the Senate by the Navy Department. For the present I present the case on the confession of the State Department.

RECORD OF THE NAVY DEPARTMENT.

If the Report of the State Department is a confession, that of the Navy Department is an authentic record of acts flagrant and indefensible, — unless we are ready to set aside the Law of Nations and the Constitution of the United States, two paramount safeguards. Both of these are degraded in order to advance the scheme. If I called it plot, I should not err; for this term is suggested by the machination. The record is complete.

The scheme first shows itself in a letter from the Secretary of State to the Secretary of the Navy, under date of May 17, 1869, informing the latter that the President deems it "desirable that *a man-of-war*, commanded by a discreet and intelligent officer, should be ordered *to visit the several ports of the Dominican Republic*, and to report upon the condition of affairs in that quarter." The Secretary adds: —

"It is also important that we should have full and accurate information in regard to the views of the Dominican

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 17, p. 109.

people of all parties in regard to annexation to the United States, or the sale or lease of the Bay of Samana, or of territory adjacent thereto."[1]

No invitation from the island appears, — not a word even from any of its people. The beginning is in the letter of the Secretary; and here we see how "a man-of-war" formed part of the first stage. A mere inquiry is inaugurated by "a man-of-war." Nor was it to stop at a single place; it was to visit the several ports of the Dominican Republic.

The Secretary of the Navy obeyed. Orders were given, and under date of June 29, 1869, Rear-Admiral Hoff reports that the Nipsic, with an armament of one 11-inch and two 9-inch guns, "is to visit all the ports of the Dominican Republic."[2] Here again is a revelation, foreshadowing the future; all the ports are to be visited by this powerful war-ship. Why? To what just end? If for negotiation, then was force, *force*, FORCE our earliest, as it has been since our constant plenipotentiary. Already we discern the contrast with Old Spain.

The loss of a screw occurred to prevent this war-breathing perambulation. The Nipsic did not go beyond Port-au-Prince; but Lieutenant-Commander Selfridge, in his report, under date of July 14, 1869, lets drop an honest judgment, which causes regret that he did not visit the whole island. Thus he wrote:—

"While my short stay in the island will not permit me to speak with authority, it is my individual opinion, that, if the United States should annex Hayti *on the representation of a*

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 34, pp. 2, 3.
[2] Ibid., No. 34, p. 3; No.45, p. 3.

party, it would be found an elephant both costly in money and lives."[1]

The whole case is opened when we are warned against annexion "on the representation of a party."

Still the scheme proceeded. On the 17th July, 1869, General Babcock sailed from New York for San Domingo, as special agent of the State Department. The records of the Department, so far as communicated to the Senate, show no authority to open negotiations of any kind, much less to treat for the acquisition of this half-island. His instructions, which are dated July 13, 1869, are simply to make certain inquiries;[2] but, under the same date, the Secretary of the Navy addresses a letter to Commander Owen, of the Seminole, with an armament of one 11-inch gun and four 32-pounders, of 4,200 pounds, in which he says: —

"You will remain at Samana, or on the coast of San Domingo, while General Babcock is there, *and give him the moral support of your guns.*"[3]

The phrase of the Secretary is at least curious. And who is General Babcock, that on his visit the Navy is to be at his back? Nothing on this head is said. All that we know from the record is that he was to make certain inquiries, and in this business "guns" play a part. To be sure, it was their "*moral* support" he was to have; but they were nevertheless "guns." Thus in all times has lawless force sought to disguise itself. Before any negotiation was begun, while only a few interrogatories were ordered by the State Department,

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 34, p. 5.
[2] Ibid., No. 17, p. 79.
[3] Ibid., No. 34, p. 6.

under which this missionary acted, "the moral support of guns" was ordered by the Navy Department. Here, Sir, permit me to say, is the first sign of war, being an undoubted usurpation, whether by President or Secretary. War is hostile force, and here it is ordered. But this is only a squint, compared with the open declaration which ensued. And here again we witness the contrast with Old Spain.

But the "guns" of the Seminole were not enough to support the missionary in his inquiries. The Navy Department, under date of August 23, 1869, telegraphed to the commandant at Key West: —

"Direct a vessel to proceed without a moment's delay to San Domingo City, *to be placed at the disposal of General Babcock while on that coast.* If not at San Domingo City, to find him."[1]

Here is nothing less than the terrible earnestness of war itself. Accordingly, the Tuscarora was dispatched; and the missionary finds himself changed to a commodore. Again the contrast with Old Spain!

How many days the Tuscarora took to reach the coast does not appear; but on the 4th September the famous protocol was executed by Orville E. Babcock, entitling himself "Aide-de-Camp to his Excellency, General Ulysses S. Grant, President of the United States of America," where, besides stipulating the annexion of Dominica to the United States in consideration of $1,500,000, it is further provided that "his Excellency, General Grant, President of the United States, promises, privately, to use all his influence in order that

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 34, p. 8.

the idea of annexing the Dominican Republic to the United States may acquire such a degree of popularity among members of Congress as will be necessary for its accomplishment."[1] Such was the work which needed so suddenly — "without a moment's delay" — a second war-ship besides the Seminole, which was already ordered to lend "the *moral* support of its guns." How unlike that boast of Old Spain, that there was not a Spanish bottom in those waters!

Returning to Washington with his protocol, the missionary was now sent back with instructions to negotiate two treaties, — one for the annexion of the half-island, and the other for the lease of the Bay of Samana. By the Constitution ambassadors and other public ministers are appointed by the President by and with the advice and consent of the Senate; but our missionary held no such commission. How the business sped appears from the State Department. The Report of the Navy Department shows how it was sustained by force. By a letter under date of December 3, 1869, on board the ship Albany, off San Domingo, addressed to Lieutenant-Commander Bunce on board the Nantasket, the missionary, after announcing the conclusion of a treaty for the lease of Samana and other purposes, imparts this important information: —

"In this negotiation the President has guarantied to the Dominican Republic protection from all foreign interposition during the time specified in the treaties for submitting the same to the people of the Dominican Republic."

Of the absolute futility and nullity of this Presidential guaranty until after the ratification of the treaties I

[1] Senate Reports, 41st Cong. 2d Sess., No. 234, p. 188.

shall speak hereafter. Meanwhile we behold the missionary changed to plenipotentiary: —

"For this purpose the honorable Secretary of the Navy was directed to place *three armed vessels in this harbor, subject to my instruction.*"

Why three armed vessels? For what purpose? How unlike the boast of Old Spain! What follows reveals the menace of war: —

"I shall raise the United States flag on shore, and shall leave a small guard with it."

Here is nothing less than military occupation. Besides war-ships in the waters, the flag is to be raised on shore, and soldiers of the United States are to be left with it. Again the contrast with Old Spain, boasting not only that there was not a single Spanish "bottom" on the coast, but not a single Spanish soldier on the land. Then follows an order to make war: —

"Should you find any foreign intervention intended, *you will use all your force* to carry out to the letter the guaranties given in the treaties."

Nothing could be stronger. Here is war. Then comes a direct menace by the young plenipotentiary, launched at the neighboring Black Republic: —

"The Dominican Republic fears trouble from the Haytian border, about Jacmel. You will please inform the people, in case you are satisfied there is an intended intervention, that such intervention, direct or indirect, will be regarded as an unfriendly act toward the United States, *and take such steps as you think necessary.*" [1]

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 34, p. 9.

The Dominican Republic fears trouble, or in other words the usurper Baez trembles for his power, and therefore the guns of our Navy are to be pointed at Hayti. Again, how little like Old Spain! And this was the way in which our negotiation began. We have heard of an "*armed* neutrality," and of an "*armed* peace"; but here is an *armed* negotiation.

The force employed in the negotiation naturally fructified in other force. Violence follows violence in new forms. Armed negotiation was changed to armed intervention, being an act of war, — all of which is placed beyond question. There is repetition and reduplication of testimony.

The swiftness of war appears in the telegram dated at the Navy Department January 29, 1870, addressed to Rear-Admiral Poor, at Key West. Here is this painful dispatch: —

"Proceed at once with the Severn and Dictator to Port-au-Prince; communicate with our Consul there, and inform the present Haytian authorities that this Government is determined to protect the present Dominican Government *with all its power.* You will then proceed to Dominica, and use your force to give the most ample protection to the Dominican Government *against any Power attempting to interfere with it.* Visit Samana Bay and the capital, *and see the United States power and authority secure there. There must be no failure in this matter.* If the Haytians attack the Dominicans with their ships, *destroy or capture them.* See that there is a proper force at both San Domingo City and Samana.

"If Admiral Poor is not at Key West, this dispatch must be forwarded to him without delay."[1]

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 34, p. 11.

"Proceed at once." Mark the warlike energy. What then? Inform the Haytian Government "that this Government is determined to protect the present Dominican Government [the usurper Baez] with *all its power*." Strong words, and vast in scope! Not only the whole Navy of the United States, but all the power of our Republic is promised to the usurper. At Dominica, where the Admiral is to go next, he is directed to use his force "to give the most ample protection to the Dominican Government [the usurper Baez] *against any Power attempting to interfere with it*." Then comes a new direction. At Samana and the City of San Domingo "see the United States power and authority secure there." Here is nothing less than military occupation. Pray, by what title? Mark again the warlike energy. And then giving to the war a new character, the Admiral is told: "If the Haytians attack the Dominicans with their ships, *destroy or capture them*." Such is this many-shotted dispatch, which is like a mitrailleuse in death-dealing missives.

This belligerent intervention in the affairs of another country, with a declaration of war against the Black Republic, all without any authority from Congress, or any sanction under the Constitution, was followed by a dispatch dated January 31, 1870, to Lieutenant-Commander Allen, of the Swatara, with an armament of six 32-pounders, 4,500 pounds, and one 11-inch gun, where is the breath of war. After hurrying the ship off to the City of San Domingo, the dispatch says: —

"If you find, when you get there, that the Dominican Government require any assistance against the enemies of that Republic, *you will not hesitate to give it to them*."[1]

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 34, p. 15.

What is this but war, at the call of the usurper Baez, against the enemies of his Government, whether domestic or foreign? Let the usurper cry out, and our flag is engaged. Our cannon must fire, it may be upon Dominicans rising against the usurper, or it may be upon Haytians warring on the usurper for their rights, or it may be upon some other foreign power claiming rights. The order is peremptory, leaving no discretion. The assistance must be rendered. "You will not hesitate to give it to them": so says the order. On which I observe, This is war.

This was not enough. The Navy Department, by still another order, dated February 9, 1870, addressed to Commodore Green, of the ship Congress, with an armament of fourteen 9-inch guns and two 60-pounder rifles, enforces this same conduct. After mentioning the treaty, the order says:—

"While that treaty is pending, the Government of the United States has agreed to afford countenance and assistance to the Dominican people *against their enemies now in the island and in revolution against the lawfully constituted Government*, and you will use the force at your command to resist any attempts by the enemies of the Dominican Republic to invade the Dominican territory, *by land or sea*, so far as your power can reach them."[1]

Here again is belligerent intervention in Dominica, with a declaration of war against the Black Republic, included under the head "enemies of the Dominican Republic," or perhaps it is a case of "running amuck," according to Malay example, for the sake of the usurper Baez.

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 34, p. 12.

Thus much for the orders putting in motion the powers of war. I have set them forth in their precise words. Soon I shall show wherein they offend International Law and the Constitution. Meanwhile the case is not complete without showing what was done under these orders. Already the State Department has testified. The Navy Department testifies in harmony with the State Department. And here the record may be seen under two heads, — first, belligerent intervention in Dominica, and, secondly, belligerent intervention in Hayti.

BELLIGERENT INTERVENTION IN DOMINICA.

In Dominica there was constant promise of protection and constant appeal for it, with recurring incidents, showing the dependence of the usurper upon our naval force. And here I proceed according to the order of dates.

Rear-Admiral Poor, of the flag-ship Severn, reports from the City of San Domingo, under date of March 12, 1870, that the President — meaning the usurper Baez — informed him that he was obliged to keep a considerable force against Cabral and Luperon, and then added, "If annexation was delayed, it would be absolutely necessary for him to call upon the United States Government for pecuniary aid."[1] Not content with our guns, the usurper wanted our dollars. Next Lieutenant-Commander Bunce, under date of March 21, 1870, reports from Puerto Plata that "the authorities think that the excitement has not yet passed, and that *the presence of a man-of-war here for a time will have a great moral effect.*"[2]

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 34, p. 17.
[2] Ibid., p. 19.

The man-of-war becomes a preacher. The same officer, under date of March 24, 1870, reports a speech of his own at Puerto Plata, that Rear-Admiral Poor "had a heavy squadron about the island, and would drive him [Luperon] out, — probably, in doing so, *destroying the town and all the property in it.*"[1] And this was followed, March 26, 1870, by formal notice from Lieutenant-Commander Bunce to the British Vice-Consul at Puerto Plata, in these terms: —

"As to my objects here, one of them certainly is, and I desire to accomplish it as plainly as possible, to inform the foreign residents here, that, if any such league or party is formed among them, and, with or without their aid, Luperon, Cabral, or any others hostile to the Dominican Government, should get possession of this port, *the naval forces of the United States would retake it*, and, in so doing, the foreign residents, as the largest property-holders, as well as the most interested in the business of the port, would be the greatest sufferers."[2]

Here is the menace of war. The naval forces of the United States will retake a port.

Meanwhile the work of protection proceeds. Rear-Admiral Poor reports, under date of May 7, 1870: —

"Upon my arrival there [at San Domingo City], I found it necessary, *properly to protect the Dominican Government*, to dispatch one of the sloops I found there to the northwest portion of the island and the other to Puerto Plata, intending, as soon as able to do so, to dispatch one to Samana Bay and to station the other off San Domingo City."[3]

Here is belligerent protection at four different points.

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 34, p. 19.
[2] Ibid., p. 20. [3] Ibid., p. 22.

Meanwhile the treaty for annexion, and also the treaty for the lease of Samana, had both expired by lapse of time March 29, 1870, while the treaty for annexion was rejected by solemn vote June 30, 1870, — so that no treaty remained even as apology for the illegitimate protection which had been continued at such cost to the country. But this made no difference in the aid supplied by our Navy. Nor was the Administration here unadvised with regard to the constant dependence of the usurper. Commodore Green reports from off San Domingo City, under date of July 21, 1870: —

"I am inclined to the opinion that a withdrawal of the protection of the United States, and of the prospect of annexation at some future time, would instantly lead to a revolution, headed by Cabral, who would be supported by the enemies of the present Government, and assisted by the Haytians."[1]

This is followed by a report from Lieutenant-Commander Allen at Samana Bay, under date of August 28, 1870, announcing that he has received a communication from "his Excellency, President Baez, requesting the presence of a vessel on the north side of the island, on account of an intended invasion by Cabral."[2] In the communication, which is inclosed, the usurper says that he "deems the presence of a ship-of-war in the Bay of Manzanillo of immediate importance."[3] Cabral, it appears, was near this place. Other points are mentioned to be visited.

Then follow other reports from Commander Irwin of the Yantic, with inclosures from Baez, where the depend-

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 34, p. 23.
[2] Ibid., pp. 23-24. [3] Ibid., p. 24.

ence of the usurper is confessed. In a letter from the Executive Mansion at San Domingo City, under date of August 30, 1870, he desires Commander Irwin to "proceed to Tortuguero de Azua for a few hours, for the purpose of transporting to this city the rest of the Dominican battalion Restauracion, as it is thought convenient by the Government."[1] Upon which Commander Irwin, under date of September 3, 1870, remarks: —

"The President was anxious to add to the force at his disposal in the City of San Domingo, *as he feared an outbreak.* . . . . I acceded to his request, . . . and on the 2d instant landed sixty-five officers and men that we had brought from Azua."[2]

Here is a confession, showing again the part played by our Navy. War-ships of the United States dance attendance on the usurper, and save him from the outbreak of the people.

Then, again, under date of September 2, 1870, the usurper declares "the necessity at present of a man-of-war in this port, and that none would be more convenient than the Yantic *for the facility of entering the river Ozama, owing to her size.*"[3] Thus not merely on the coasts, but in a river, was our Navy invoked.

But this was not enough. Under date of October 8, 1870, the usurper writes from the Executive Residence "to reiterate the necessity of the vessels now in that bay [Samana] coming to these southern coasts."[4] And as late as January 8, 1871, Rear-Admiral Lee reports from off San Domingo City, that delay in accomplishing

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 34, p. 31.
[2] Ibid., p. 26. [3] Ibid., p. 31. [4] Ibid., p. 32.

annexion has, among other things, "risk of insurrection,"[1] — thus attesting the dependence of the usurper upon our power. Such is the uniform story, where the cry of the usurper is like the refrain of a ballad.

BELLIGERENT INTERVENTION IN HAYTI.

THE constant intervention in Dominica was supplemented by that other intervention in Hayti, when an American admiral threatened war to the Black Republic. Shame and indignation rise as we read the record. Already we know it from the State Department. Rear-Admiral Poor, under date of February 12, 1870, reports to the Navy Department his achievement. After announcing that the Severn, with an armament of fourteen 9-inch guns and one 60-pounder rifle, and the Dictator, with an armament of two 15-inch guns, arrived at Port-au-Prince the 9th instant, he narrates his call on the Provisional President of Hayti, and how, after communicating the pendency of negotiations and the determination of the Government of the United States "with its whole power" to prevent any interference on the part of the Haytian or any other Government with that of the Dominicans, (meaning the usurper Baez,) he launched this declaration: —

"Therefore, if any attack should be made upon the Dominicans [meaning the usurper Baez] during the said negotiations, under the Haytian or any other flag, it would be regarded as an act of hostility to the United States flag, and would provoke hostility in return."

[1] Executive Documents, 41st Cong. 3d Sess., Senate, No. 34, p. 27.

Such was his language in the Executive Mansion of the President. The Rear-Admiral reports the dignified reply of the President and Secretary of State, who said: —

"That, 'while they were aware of their weakness, they knew their rights, and would maintain them and their dignity as far as they were able, and that they must be allowed to be the judges of their own policy,' — or words to that effect." [1]

Such words ought to have been to the Rear-Admiral more than a broadside. How poor were his great guns against this simple reproof! The Black Republic spoke well. The Rear-Admiral adds, that he learned afterward, unofficially, "that the authorities were displeased with what they considered a menace on the part of the United States, accompanied with force." And was it not natural that they should be displeased?

All this is bad enough from the official record; but I am enabled from another source, semi-official in character, to show yet more precisely what occurred. I have a minute account drawn up by the gentleman who acted as interpreter on the occasion. The Rear-Admiral could not speak French; the President could not speak English. Instead of waiting upon the Secretary of State and making his communication to this functionary, he went at once to the Executive Mansion, with the officers of his vessel and other persons, when, after announcing to the President that he came to pay a friendly visit, he said, that, "as a sailor, he would take the same opportunity to communicate instructions received from his Government."

The President, justly surprised, said that he was not

[1] Executive Documents, 41st Cong., 3d Sess., Senate, No. 34, p. 14.

aware that the Rear-Admiral had any official communication to make, otherwise the Secretary of State for Foreign Affairs would have been present, being the proper party to receive it. The Secretary of State and other members of the Provisional Government were sent for, when the Rear-Admiral proceeded to make the communication already reported, and at the same time pointing to his great war-ships in the outside harbor, plainly visible from the Executive Mansion, remarked, that it could be seen he had power enough to enforce his communication, and that besides he was expecting other forces (and in fact two other war-ships soon arrived, one of them a monitor); and then he announced, that, "if any vessels under Haytian or other flags were found in Dominican waters, *he would sink or capture them.*" Brave Rear-Admiral! The interpreter, from whose account I am drawing, says that the President felt very sorry and humiliated by this language, especially when the Rear-Admiral referred to the strong forces under his command, and he proceeded to reply:—

"That Hayti, having the knowledge of her feebleness and of her dignity, had taken note of the communication made in the name of the United States; that, under present circumstances, the Government of Hayti would not interfere in the internal affairs of San Domingo, but the Government could not prevent the sympathies of the Haytian people to be with the Dominican patriots fighting against annexation."

Who will not say that in this transaction the Black Republic appears better than the Rear-Admiral?

TWO PROPOSITIONS ESTABLISHED.

SUCH is the testimony, establishing beyond question the two propositions, first, that the usurper Baez was maintained in power by our Navy to enable him to carry out the sale of his country, and, secondly, that further to assure this sale the neighbor Republic of Hayti was violently menaced, — all this being in breach of Public Law, International and Constitutional.

In considering how far this conduct is a violation of International Law and of the Constitution of the United States, I begin with the former.

GREAT PRINCIPLE OF "EQUALITY OF NATIONS". VIOLATED.

INTERNATIONAL LAW is to nations what the National Constitution is to our coequal States: it is the rule by which they are governed. As among us every State and also every citizen has an interest in upholding the National Constitution, so has every nation and also every citizen an interest in upholding International Law. As well disobey the former as the latter. You cannot do so in either case without disturbing the foundations of peace and tranquillity. To insist upon the recognition of International Law is to uphold civilization in one of its essential securities. To vindicate International Law is a constant duty, which is most eminent according to the rights in jeopardy.

Foremost among admitted principles of International Law is the axiom, that all nations are equal, without distinction of population, size, or power. Nor does International Law know any distinction of color. As a

natural consequence, whatever is the rule for one is the rule for all; nor can we do to a thinly-peopled, small, weak, or black nation what we would not do to a populous, large, strong, or white nation, — nor what that nation might not do to us. "Do unto others as you would have them do unto you," is the plain law for all nations, as for all men. The equality of nations is the first principle of International Law, as the equality of men is the first principle in our Declaration of Independence; and you may as well assail the one as the other. As all men are equal before the Law, so are all nations.

This simple statement is enough; but since this commanding principle has been practically set aside in the operations of our Navy, I proceed to show how it is illustrated by the authorities.

The equality of nations, like the equality of men, was recognized tardily, under the growing influence of civilization. Not to the earlier writers, not even to the wonderful Grotius, whose instinct for truth was so divine, do we repair for the elucidation of this undoubted rule. Our Swiss teacher, Vattel, prompted, perhaps, by the experience of his own country, surrounded by more powerful neighbors, was the first to make it stand forth in its present character. His words, which are as remarkable for picturesque force as for juridical accuracy, state the whole case: —

"Nations composed of men, and considered as so many free persons living together in the state of Nature, are naturally equal, and inherit from Nature the same obligations and rights. Power or weakness does not in this respect produce any difference. A dwarf is as much a man as a giant; a small republic is no less a sovereign state than the most powerful kingdom. By a necessary consequence of that

equality, whatever is lawful for one nation is equally lawful for any other, and whatever is unjustifiable in the one is equally so in the other."[1]

Later authorities have followed this statement, with some slight variety of expression, but with no diminution of its force. One of the earliest to reproduce it was Sir William Scott, in one of his masterly judgments, lending to it the vivid beauty of his style: —

"A fundamental principle of Public Law is the perfect equality and entire independence of all distinct states. Relative magnitude creates no distinction of right; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbor; and any advantage seized upon that ground is mere usurpation. This is the great foundation of Public Law, which it mainly concerns the peace of mankind, both in their politic and private capacities, to preserve inviolate."[2]

The German Heffter states the rule more simply, but with equal force: —

"Nations, being sovereign or independent of each other, treat together on a footing of complete equality. The most feeble state has the same political rights as the strongest. In other terms, each state exercises in their plenitude the rights which result from its political existence and from its participation in international association."[3]

The latest English writers testify likewise. Here are the words of Phillimore: —

"The natural equality of states is the necessary companion of their independence, — that primitive cardinal right

[1] Law of Nations, (London, 1797,) Preliminaries, §§ 18, 19.
[2] Le Louis: 2 Dodson, R., 243.
[3] Le Droit International, (Berlin et Paris, 1857,) § 27.

upon which the science of International Law is mainly built. . . . . They are entitled, in their intercourse with other states, to all the rights incident to a natural equality. No other state is entitled to encroach upon this equality by arrogating to itself peculiar privileges or prerogatives as to the manner of their mutual intercourse." [1]

Twiss follows Phillimore, but gives to the rule a fresh statement: —

"The independence of a nation is absolute, and not subject to qualification; so that nations, in respect of their intercourse under the Common Law, are peers or equals. . . . . Power and weakness do not in this respect give rise to any distinction. . . . . It results from this equality, that whatever is lawful for one nation is equally lawful for another, and whatever is unjustifiable in the one is equally unjustifiable in the other." [2]

In our own country, Chancellor Kent, a great authority, gives the rule with perfect clearness and simplicity: —

"Nations are equal in respect to each other, and entitled to claim equal consideration for their rights, whatever may be their relative dimensions or strength, or however greatly they may differ in government, religion, or manners. This perfect equality and entire independence of all distinct states is a fundamental principle of Public Law." [3]

General Halleck, whose work is not surpassed by any other in practical value, while quoting especially Vattel and Sir William Scott, says with much sententiousness: —

[1] Commentaries upon International Law, (London, 1855,) Vol. II. pp. 33-34.

[2] Law of Nations: Rights and Duties in Time of Peace, § 12, p. 11.

[3] Commentaries, Vol. I. p. 21.

"All sovereign states, without respect to their relative power, are, in the eye of International Law, equal, being endowed with the same natural rights, bound by the same duties, and subject to the same obligations." [1]

Thus does each authority reflect the others, while the whole together present the Equality of Nations as a guiding principle not to be neglected or dishonored.

The record already considered shows how this principle has been openly defied by our Government in the treatment of the Black Republic, — first, in the menace of war by Rear-Admiral Poor, and, secondly, in the manner of the menace, — being in substance and in form. In both respects the Admiral did what he would not have done to a powerful nation, what he would not have done to any white nation, and what we should never allow any nation to do to us.

Hayti was weak, and the gallant Admiral, rowing ashore, pushed to the Executive Mansion, where, after what he called "a friendly visit," he struck at the independence of the Black Republic, pointing from the windows of the Executive Mansion to his powerful armament, and threatening to employ it against the Haytian capital or in sinking Haytian ships. For the present I consider this unprecedented insolence only so far as it was an offence against the Equality of Nations, and here it may be tried easily. Think you that we should have done this thing to England, France, or Spain? Think you that any foreign power could have done it to us? But if right in us toward Hayti, it would be right in us toward England, France, or Spain; and it would be right in any foreign power toward us. If it were right

[1] International Law, pp. 97-98.

in us toward Hayti, then might England, France, Spain, or Hayti herself do the same to us. Imagine a foreign fleet anchored off Alexandria, while the admiral, pulling ashore in his boat, hurries to the Executive Mansion, and then, after announcing a friendly visit, points to his war-ships visible from the windows, and menaces their thunder. Or to be more precise, suppose the Haytian Navy to return the compliment here in the Potomac. But just in proportion as we condemn any foreign fleet, including the Haytian Navy, doing this thing, do we condemn ourselves. The case is clear. We did not treat Hayti as our peer. The great principle of the Equality of Nations was openly set at nought.

To extenuate this plain outrage, I have heard it said, that, in our relations with Hayti, we are not bound by the same rules of conduct applicable to other nations. So I have heard; and this, indeed, is the only possible defence for the outrage. As in other days it was proclaimed that a black man had no rights which a white man was bound to respect, so this defence assumes the same thing of the Black Republic. But at last the black man has obtained Equal Rights; and so, I insist, has the Black Republic. As well deny the one as the other. By an Act of Congress, drawn by myself and approved by Abraham Lincoln in the session of 1862, diplomatic relations were established between the United States and Hayti, and the President was expressly authorized to appoint diplomatic representatives there. At first we were represented by a Commissioner and Consul-General; now it is by a Minister Resident and Consul-General. Thus, by Act of Congress and the appointment of a Minister, have we recognized the Equal Rights of Hayti in the Family of Nations, and placed

the Black Republic under the safeguard of that great axiom of International Law which makes it impossible for us to do unto her what we would not allow her to do unto us. In harmony with the United States, the "Almanach de Gotha," where is the authentic, if not official, list of nations entitled to Equal Rights, contains the name of Hayti. Thus is the Black Republic enrolled as an equal; and yet have we struck at this equality. How often have I pleaded that all men are equal before the Law! And now I plead that all nations are equal before the Law, without distinction of color.

BELLIGERENT INTERVENTION CONTRARY TO INTERNATIONAL LAW.

From one violation of International Law I pass to another. The proceedings already detailed show belligerent intervention, contrary to International Law. Here my statement will be brief.

According to all the best authorities, in harmony with reason, no nation has a right to interfere by belligerent intervention in the internal affairs of another, and especially to take part in a civil feud, except under conditions which are wanting here; nor has it a right to interfere by belligerent intervention between two independent nations. The general rule imposed by modern civilization is *Non-Intervention;* but this rule is little more than a scientific expression of that saying of Philip de Comines, the famous minister of Louis the Eleventh, "Our Lord God does not wish that one nation should play the devil with another." Not to occupy time with authorities, I content myself with some of

our own country, which are clear and explicit, and I begin with George Washington, who wrote to Lafayette, under date of December 25, 1798: —

"No Government ought to interfere with the internal concerns of another, *except for the security of what is due to themselves.*"[1]

Wheaton lays down the same rule substantially, when he says: —

"Non-Interference is the general rule, to which cases of justifiable interference form exceptions, *limited by the necessity of each particular case.*"[2]

Thus does Wheaton, like Washington, found intervention in the necessity of the case. Evidently neither thought of founding it on a scheme for the acquisition of foreign territory.

In harmony with Washington and Wheaton, I cite General Halleck, in his excellent work: —

"Wars of intervention are to be justified or condemned accordingly as they are or are not undertaken *strictly as the means of self-defence*, and self-protection against the aggrandizements of others, and without reference to treaty obligations; for, if wrong in themselves, the stipulations of a treaty cannot make them right."[3]

Then again Halleck says, in words applicable to the present case: —

"The invitation of one party to a civil war can afford no right of foreign interference, as against the other party. The

[1] Writings, ed. Sparks, Vol. XI. p. 382.
[2] Elements of International Law, ed. Dana, p. 120; ed. Lawrence, p. 132.
[3] International Law, p. 338.

same reasoning holds good with respect to armed intervention, whether between belligerent states or between belligerent parties in the same state."[1]

Armed Intervention, or, as I would say, Belligerent Intervention, is thus defined by Halleck: —

"Armed intervention consists *in threatened or actual force*, employed or to be employed by one state in regulating or determining the conduct or affairs of another. Such an employment of force is virtually *a war*, and must be justified or condemned upon the same general principles as other wars."[2]

Applying these principles to existing facts already set forth, it is easy to see that the belligerent intervention of the United States in the internal affairs of Dominica, maintaining the usurper Baez in power, especially against Cabral, was contrary to acknowledged principles of International Law, and that the belligerent intervention between Dominica and Hayti was of the same character. Imagine our Navy playing the fantastic tricks on the coast of France which it played on the coasts of San Domingo, and then, still further, imagine it entering the ports of France as it entered the ports of Hayti, and you will see how utterly indefensible was its conduct. In the capital of Hayti it committed an act of war hardly less flagrant than that of England at the bombardment of Copenhagen. Happily blood was not shed, but there was an act of war. Here I refer to the authorities already cited, and challenge contradiction.

To vindicate these things, whether in Dominica or in Hayti, you must discard all acknowledged principles of International Law, and join those who, regardless of

[1] International Law, p. 339.
[2] Ibid., p. 335.

rights, rely upon arms. Grotius reminds us of Achilles, as described by Horace: —

"Rights he spurns
As things not made for him, claims all by arms";

and he quotes Lucan also, who shows a soldier exclaiming: —

"Now, Peace and Law, I bid you both farewell."

The old Antigonus, who, when besieging a city, laughed at a man who brought him a dissertation on Justice, and Pompey, who exclaimed, "Am I, when in arms, to think of the laws?"[1] — these seem to be the models for our Government on the coasts of San Domingo.

USURPATION OF WAR POWERS CONTRARY TO THE CONSTITUTION.

THE same spirit which set at defiance great principles of International Law, installing force instead, is equally manifest in disregard of the Constitution of the United States; and here one of its most distinctive principles is struck down. By the Constitution it is solemnly announced that to Congress is given the power "to declare war." This allotment of power was made only after much consideration, and in obedience to those popular rights consecrated by the American Revolution. In England, and in all other monarchies at the time, this power was the exclusive prerogative of the Crown, so that war was justly called "the last reason of kings." The framers of our Constitution naturally refused to vest this kingly prerogative in the President. Kings were rejected in substance as in name. The One-Man

[1] See Grotius, De Jure Belli et Pacis, tr. Whewell, (Cambridge, 1853,) Prolegomena, pp. xxxix - xl.

Power was set aside, and this kingly prerogative placed under the safeguard of the people, as represented in that highest form of national life, an Act of Congress. No other provision in the Constitution is more distinctive, or more worthy of veneration. I do not go too far, when I call it an essential element of Republican Institutions, happily discovered by our fathers.

Our authoritative commentator, Judge Story, has explained the origin of this provision, and his testimony confirms the statement I have made. After remarking that the power to declare war is "not only *the highest sovereign prerogative*, but that it is in its own nature and effects so critical and calamitous that it requires the utmost deliberation and the successive review of all the councils of the nation," the learned author remarks with singular point, that "it should be difficult in a Republic to declare war," and that, therefore, "the coöperation of all the branches of the *legislative* power ought upon principle to be required in this, *the highest act of legislation*"; and he even goes so far as to suggest still greater restriction, "as by requiring a concurrence of two thirds of both Houses."[1] There is no such conservative requirement; but war can be declared only by a majority of both Houses with the approbation of the President. There must be the embodied will of the Legislative and the Executive, — in other words, of Congress and the President. Not Congress alone, without the President, can declare war; nor can the President alone, without Congress. Both must concur; and here is the triumph of Republican Institutions.

But this distinctive principle of our Constitution and new-found safeguard of popular rights has been set at

[1] Commentaries on the Constitution, § 1166. See also § 1512.

nought by the President; or rather, in rushing to the goal of his desires, he has overleaped it, as if it were stubble.

In harmony with the whole transaction is the apology, which insists that the President may do indirectly what he cannot do directly, — that he may, according to old Polonius, "by indirections find directions out," — in short, that, though he cannot declare war directly, he may indirectly. We are reminded of the unratified treaty, with its futile promise "against foreign interposition," — that is, with the promise of the War Powers of our Government set in motion by the President alone, without an Act of Congress. Here are the precise terms: —

"The people of the Dominican Republic shall, in the shortest possible time, express, in a manner conformable to their laws, their will concerning the cession herein provided for; and the United States shall, until such expression shall be had, *protect the Dominican Republic against foreign interposition*, in order that the national expression may be free."[1]

Now nothing can be clearer than that this provision, introduced on the authority of the President alone, was beyond his powers, and therefore *brutum fulmen*, a mere wooden gun, until after the ratification of the treaty. Otherwise the President alone might declare war, without an Act of Congress, doing indirectly what he cannot do directly, and thus overturning that special safeguard which places under the guardianship of Congress what Story justly calls "the highest sovereign prerogative."

Here we meet another distinctive principle of our

[1] Treaty, Art. IV.: Executive Documents, 41st Cong. 3d Sess., Senate, No. 17, p. 99.

Constitution. As the power to declare war is lodged in Congress with the concurrence of the President, so is the power to make a treaty lodged in the President with the concurrence of two thirds of the Senate. War is declared only by Congress and the President; a treaty is made only by the President and two thirds of the Senate. As the former safeguard was new, so was the latter. In England and all other monarchies at the time, the treaty-making power was a kingly prerogative, like the power to declare war. The provision in our Constitution, requiring the participation of the Senate, was another limitation of the One-Man Power, and a new contribution to Republican Institutions.

"The Federalist," in an article written by Alexander Hamilton, thus describes the kingly prerogative:—

"The king of Great Britain is the sole and absolute representative of the nation in all foreign transactions. He can *of his own accord* make treaties of peace, commerce, alliance, and of every other description. . . . . Every jurist of that kingdom, and every other man acquainted with its Constitution, knows, as an established fact, that the prerogative of making treaties exists in the Crown in its utmost plenitude; and that the compacts entered into by the royal authority have the most complete legal validity and perfection, *independent of any other sanction.*"[1]

Such was the well-known kingly prerogative which our Constitution rejected. Here let "The Federalist" speak again:—

"There is no comparison between the intended power of the President and the actual power of the British sovereign.

[1] Federalist, No. LXIX.

The one can perform alone what the other can only do with the concurrence of a branch of the Legislature." [1]

Then, again, after showing that a treaty is a contract with a foreign nation, having the force of law, "The Federalist" proceeds: —

"The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind as those which concern its intercourse with the rest of the world *to the sole disposal of a magistrate created and circumstanced as would be a President of the United States.*" [2]

Thus does this contemporary authority testify against handing over to "the sole disposal" of the President the delicate and momentous question in the unratified treaty.

Following "The Federalist" is the eminent commentator already cited, who insists that "it is too much to expect that a free people would confide to a single magistrate, however respectable, *the sole authority* to act conclusively, as well as exclusively, upon the subject of treaties"; and that, "however proper it may be in a monarchy, there is no American statesman but must feel that such a prerogative in an American President would be inexpedient and dangerous," — that "it would be inconsistent with that wholesome jealousy which all republics ought to cherish of all depositaries of power"; and then he adds: —

"The check which acts upon the mind, *from the consideration that what is done is but preliminary*, and requires the assent of other independent minds *to give it a legal conclusive-*

[1] Federalist, No. LXIX. [2] Ibid., No. LXXV.

ness, is a restraint which awakens caution and compels to deliberation." [1]

The learned author then dwells with pride on the requirement of the Constitution, which, while confiding the power to the Executive Department, "guards it from serious abuse by placing it *under the ultimate superintendence of a select body of high character and high responsibility*"; and then, after remarking that "the President is the immediate author and finisher of all treaties," he concludes, in decisive words, that "no treaty so formed *becomes binding upon the country*, unless it receives the deliberate assent of two thirds of the Senate." [2]

Nothing can be more positive. Therefore, even at the expense of repetition, I insist, that, as the power to declare war is under the safeguard of Congress with the concurrence of the President, so is the power to make a treaty in the President with the concurrence of two thirds of the Senate, — but the act of neither becomes binding without this concurrence. Thus, on grounds of authority, as well as of reason, is it clear that the undertaking of the President to employ the War Powers without the authority of Congress was void, and every employment of these War Powers in pursuance thereof was a usurpation.

If the President were a king, with the kingly prerogative either to declare war or to make treaties, he might do what he has done; but being only President, with the limited powers established by the Constitution, he cannot do it. The assumption in the Dominican treaty

[1] Commentaries on the Constitution, § 1506.
[2] Ibid., § 1507.

is exceptional and abnormal, being absolutely without precedent. The treaty with France in 1803 for the cession of Louisiana contained no such assumption; nor did the treaty with Spain in 1819 for the cession of Florida; nor did the treaty with Mexico in 1848, by which the title to Texas and California was assured; nor did the treaty with Mexico in 1853, by which new territory was obtained; nor did the treaty with Russia in 1867 for the cession of her possessions in North America. In none of these treaties was there any such assumption of power. The Louisiana treaty stipulated that possession should be taken by the United States "immediately after the ratification of the present treaty by the President of the United States, and in case that of the First Consul shall have been previously obtained."[1] The Florida treaty stipulated "six months after the exchange of the ratification of this treaty, or sooner, if possible."[2] But these stipulations, by which possession on our part, with corresponding responsibilities, was adjourned till after the exchange of ratifications, were simply according to the dictate of reason, in harmony with the requirement of our Constitution.

The case of Texas had two stages: first, under an unratified treaty; and, secondly, under a Joint Resolution of Congress. What was done under the latter had the concurrence of Congress and the President; so that the inchoate title of the United States was created by Act of Congress, in plain contradiction to the present case, where the title, whatever it may be, is under an unratified treaty, *and is created by the President alone.* Here is a manifest difference, not to be forgotten.

[1] Treaty, Art. V.: Statutes at Large, Vol. VIII. p. 202.
[2] Treaty, Art. VII.: Ibid., p. 258.

During the pendency of the treaty, there was an attempt by John Tyler, aided by his Secretary of State, John C. Calhoun, to commit the United States to the military support of Texas. It was nothing but an attempt. There was no belligerent intervention or act of war, but only what Benton calls an "assumpsit" by Calhoun. On this "assumpsit" the veteran Senator, in the memoirs of his Thirty Years in the Senate, breaks forth in these indignant terms: —

"As to secretly lending the Army and Navy of the United States to Texas to fight Mexico while we were at peace with her, it would be a crime against God and man and our own Constitution, for which heads might be brought to the block, if Presidents and their Secretaries, like Constitutional Kings and Ministers, should be held capitally responsible for capital crimes." [1]

The indignant statesman, after exposing the unconstitutional charlatanry of the attempt, proceeds: —

"And that no circumstance of contradiction or folly should be wanting to crown this plot of crime and imbecility, it so happened, that, on the same day that our new Secretary here was giving his written assumpsit to lend the Army and Navy to fight Mexico while we were at peace with her, the agent Murphy was communicating to the Texan Government, in Texas, *the refusal of Mr. Tyler, through Mr. Nelson, to do so, because of its unconstitutionality.*" [2]

Mr. Nelson, Secretary of State *ad interim*, wrote Mr. Murphy, our Minister in Texas, under date of March 11, 1844, that "the employment of the Army or Navy

[1] Thirty Years' View, Vol. II. p. 642.
[2] Ibid., p. 643.

against a foreign power with which the United States are at peace is not within the competency of the President." [1]

Again Benton says: —

"The engagement to fight Mexico for Texas, while we were at peace with Mexico, was to make war with Mexico! — *a piece of business which belonged to the Congress*, and which should have been referred to them, and which, on the contrary, was concealed from them, though in session and present." [2]

In the face of this indignant judgment, already the undying voice of history, the "assumpsit" of John C. Calhoun will not be accepted as a proper example for a Republican President. But there is not a word of that powerful utterance by which this act is forever blasted that is not strictly applicable to the "assumpsit" in the case of Dominica. If an engagement to fight Mexico for Texas, while we were at peace with Mexico, was nothing less than war with Mexico, so the present engagement to fight Hayti for Dominica, while we are at peace with Hayti, is nothing less than war with Hayti. Nor is it any the less "a crime against God and man and our own Constitution" in the case of Hayti than in the case of Mexico. But the present case is stronger than that which aroused the fervid energies of Benton. The "assumpsit" here has been followed by belligerent intervention and acts of war.

President Polk, in his Annual Message of December, 1846, paid homage to the true principle, when he announced that "the moment the terms of annexation

[1] Senate Documents, 28th Cong. 1st Sess., No. 349, p. 10.
[2] Thirty Years' View, Vol. II. p. 643.

offered by the United States were accepted by Texas, the latter became so far a part of our own country as to make it our duty to afford protection and defence."[1] And accordingly he directed those military and naval movements which ended in war with Mexico. But it will be observed here that these movements were conditioned on the acceptance by Texas of the terms of annexion definitively proposed by the United States, while our title had been created by Act of Congress, and not by the President alone.

Therefore, according to the precedents of our history, reinforced by reason and authority, does the "assumpsit" of the treaty fail. I forbear from characterizing it. My duty is performed, if I exhibit it to the Senate.

But this story of a violated Constitution is not yet complete. Even admitting some remote infinitesimal semblance of excuse or apology during the pendency of the treaty, all of which I insist is absurd beyond question, though not entirely impossible in a quarter unused to constitutional questions and heeding them little, —conceding that the "assumpsit" inserted in the treaty by the Secretary of State had deceived the President into the idea that he possessed the kingly prerogative of declaring war at his own mere motion, —and wishing to deal most gently even with an undoubted usurpation of the kingly prerogative, so long as the Secretary of State, sworn counsellor of the President, supplied the formula for the usurpation, (and you will bear witness that I have done nothing but state the case,) — it is hard to hold back, when the same usurpation is openly prolonged after the Senate had rejected the treaty on

[1] Executive Documents, 29th Cong. 2d Sess., H. of R., No. 4, p. 15.

which the exercise of the kingly prerogative was founded, and when the "assumpsit" devised by the Secretary of State had passed into the limbo of things lost on earth. Here there is no remote infinitesimal semblance of excuse or apology, — nothing, — absolutely nothing. The usurpation pivots on nonentity, — always excepting the kingly will of the President, which constitutionally is a nonentity. The great artist of Bologna, in a much admired statue, sculptured Mercury as standing on a puff of air. The President has not even a puff of air to stand on.

Nor is there any question with regard to the facts. Saying nothing of the lapse of the treaty on the 29th March, 1870, being the expiration of the period for the exchange of ratifications, I refer to its formal rejection by the Senate, June 30, 1870, which was not unknown to the President. In the order of business the rejection was communicated to him, while it became at once matter of universal notoriety. Then, by way of further fixing the President with this notice, I refer to his own admission in the Annual Message of December last, when he announces that "during the last session of Congress a treaty for the annexation of the Republic of San Domingo to the United States failed to receive the requisite two-thirds of the Senate," and then, after denouncing the rejection as "folly," he proceeds as follows: —

"My suggestion is, that by Joint Resolution of the two Houses of Congress the Executive be authorized to appoint a Commission *to negotiate a treaty with the authorities of San Domingo for the acquisition of that island*, and that an appropriation be made to defray the expenses of such Commission. The question may then be determined, either by the action of

the Senate upon the treaty, or the joint action of the two Houses of Congress upon a resolution of annexation, as in the case of the acquisition of Texas."

Thus by the open declaration of the President was the treaty rejected, while six months after the rejection he asks for a Commission to negotiate a new treaty, and an appropriation to defray the expenses of the Commission; and not perceiving the inapplicability of the Texas precedent, he proposes to do the deed by Joint Resolution of Congress. And yet during this intermediate period, when there was no unratified treaty extant, the same belligerent intervention has been proceeding, the same war-ships have been girdling the island with their guns, and the same naval support has been continued to the usurper Baez, — all at great cost to the country and by the diversion of our naval forces from other places of duty, while the Constitution has been dismissed out of sight like a discharged soldier.

Already you have seen how this belligerent intervention proceeded after the rejection of the treaty; how on the 21st July, 1870, Commodore Green reported that "a withdrawal of the protection of the United States and of the prospect of annexation at some future time would instantly lead to a revolution headed by Cabral"; how on the 28th August, 1870, Lieutenant Commander Allen reported Baez as "requesting the presence of a vessel on the north side of the island on account of an intended invasion by Cabral"; how at the same time the usurper cries out that he "deems the presence of a ship-of-war in the Bay of Manzanillo of immediate importance"; how on the 3d September, 1870, Commander Irwin reported that Baez "feared an outbreak," and appealed to the Commander to "bring him some of his men that

were at Azua," which the obliging Commander did; how under date of September 2, 1870, the usurper, after declaring the necessity of a man-of-war at the port of San Domingo, says that "none would be more convenient than the Yantic for the facility of entering the river Ozama, owing to her size"; and how again under date of October 8, 1870, the usurper writes still another letter "to reiterate the necessity of the vessels now in that bay [Samana] coming to these southern coasts." All these things you have seen, attesting constantly our belligerent intervention and the maintenance of Baez in power by our Navy, which became his body-guard and omnipresent upholder, and all after the rejection of the treaty. I leave them to your judgment without one word of comment, reminding you only that no President is entitled to substitute his kingly will for the Constitution of our country.

In curious confirmation of the first conclusion from the official document, the letter of Captain Temple to Mr. Wade should not be forgotten. This letter has found its way into the papers, and if not genuine, it ought to be. It purports to be dated, Tennessee, Azua Bay, February 24, 1871. Here is the first paragraph:—

"I understand that several of the gentlemen belonging to the expedition are to start to-morrow overland for Port-au-Prince. It may not have occurred to these gentlemen that by so doing they will virtually place themselves in the position of spies, and if they are taken by Cabral's people, they can be hung to the nearest tree by sentence of a drum-head court-martial, according to all the rules of civilized warfare. *For they belong to a nation that, through the orders of its Executive to the naval vessels here, has chosen to take part in the internal conflicts of this country;* they come directly from the

head-quarters of Cabral's enemies; they are without arms, uniform, or authority of any kind for being in a hostile region. They *are*, in fact, spies. They go expressly to learn everything connected with the enemy's country, and their observations are intended for publication, and thus indirectly to be reported back to President Baez. Surely Cabral would have a right to prevent this, if he can."

It will be seen that the gallant Captain does not hesitate to recognize the existing rights of Cabral under the Laws of War, and to warn against any journey by members of the Commission across the island to Hayti,—as, if taken by Cabral's people, they could be hung to the nearest tree by sentence of drum-head court-martial, "according to all the rules of civilized warfare"; and the Captain gives the reason: "For they belong to a nation that, through the orders of its Executive to the naval vessels here, has chosen to take part in the internal conflicts of this country." Here is belligerent intervention openly recognized by the gallant Captain, and without the authority of Congress. If the gallant Captain wrote the letter, he showed himself a master of International Law whom Senators might do well to follow. If he did not write it, the instructive jest will at least relieve the weariness of this discussion.

SUMMARY.

Mr. President, as I draw to a close, allow me to repeat the very deep regret with which I make this exposure. Most gladly would I avoid it. Controversy, especially at my time of life, has no attraction for me; but I have been reared in the school of duty, and now, as of old, I cannot see wrong without trying to arrest it.

I plead now, as I have often pleaded before, for Justice and Peace.

In the evidence adduced I have confined myself carefully to public documents, not travelling out of the record. Dispatches, naval orders, naval reports, — these are the unimpeachable authorities. And all these have been officially communicated to the Senate, are now printed by its order, accessible to all. On this unanswerable and cumulative testimony, where each part confirms the rest, and the whole has the harmony of truth, I present this transgression. And here it is not I who speak, but the testimony.

Thus stands the case. International Law has been violated in two of its commanding rules, one securing the Equality of Nations, and the other providing against Belligerent Intervention, — while a distinctive fundamental principle of the Constitution, by which the President is deprived of a kingly prerogative, is disregarded, and this very kingly prerogative is asserted by the President. This is the simplest statement. Looking still further at the facts, we see that all this great disobedience has for its object the acquisition of an outlying tropical island, with large promise of wealth, and that in carrying out this scheme our Republic has forcibly maintained a usurper in power that he might sell his country, and has dealt a blow at the independence of the Black Republic of Hayti, which, besides being a wrong to that Republic, was an insult to the African race. And all this has been done by kingly prerogative alone, without the authority of an Act of Congress. If such a transaction, many-headed in wrong, can escape judgment, it is difficult to see what securities remain. What other sacred rule of International Law

may not be violated? What other foreign nation may not be struck at? What other belligerent menace may not be hurled? What other kingly prerogative may not be seized?

On another occasion I showed how these wrongful proceedings had been sustained by the President beyond all example, but in a corresponding spirit. Never before has there been such Presidential intervention in the Senate as we have been constrained to witness. Presidential visits to the Capitol, with appeals to Senators, have been followed by assemblies at the Executive Mansion, also with appeals to Senators; and who can measure the pressure of all kinds by himself or agents, especially through the appointing power, all to secure the consummation of this scheme? In harmony with this effort was the Presidential Message, where, while charging the Senate with "folly" in rejecting the treaty, we are gravely assured that by the proposed acquisition "our large debt abroad is ultimately to be extinguished," —thus making San Domingo the pack-horse of our vast load.

Then, responding to the belligerent menace of his Admiral, the President makes a kindred menace by proposing nothing less than the acquisition of "the island of San Domingo," thus adding the Black Republic to his scheme. The innocent population there were startled. Their Minister here protested. Nor is it unnatural that it should be so. Suppose the Queen of England, in her speech at the opening of Parliament, had proposed in formal terms the acquisition of the United States; or suppose Louis Napoleon, in his speech at the opening of the Chambers, during the Mexican War, while the French forces were in Mexico, had coolly pro-

posed the acquisition of that portion of the United States adjoining Mexico and stretching to the Atlantic, and, in support of his proposition, had set forth the productiveness of the soil, the natural wealth that abounded there, and wound up by announcing that out of this might be paid the French debt abroad, which was to be saddled upon the coveted territory. Suppose such a proposition by Louis Napoleon or by the English Queen, made in formal speech to Chambers or Parliament, what would have been the feeling in our country? Nor would that feeling have been diminished by the excuse that the offensive proposition crept into the speech by accident. Whether by accident or design, it would attest small consideration for our national existence. But the Haytians love their country as we love ours; especially are they resolute for national independence. All this is shown by the reports which reach us now, even if their whole history did not attest it.

The language of the President in charging the Senate with "folly" was not according to approved precedents. Clearly this is not a proper term to be employed by one branch of the Government with regard to another, least of all by the President with regard to the Senate. Folly, Sir! Was it folly, when the Senate refused to sanction proceedings by which the Equal Rights of the Black Republic were assailed? Was it folly, not to sanction hostilities against the Black Republic without the authority of Congress? Was it folly, not to sanction belligerent intervention in a foreign country without the authority of Congress? Was it folly, not to sanction a usurpation of the War Powers under the Constitution? According to the President, all this was folly in the Senate. Let the country judge.

Thus do we discern, whether on the coasts of San Domingo or here at Washington, the same determination, with the same disregard of great principles, as also the same recklessness toward the people of Hayti, who have never injured us.

PRESENT DUTY.

In view of these things, the first subject of inquiry is not soil, climate, productiveness, and possibilities of wealth, but the exceptional and abnormal proceedings of our own Government. This inquiry is essentially preliminary in character. Before considering the treaty or any question of acquisition, we must at least put ourselves right as a nation; nor do I see how this can be done without retracing our steps, and consenting to act in subordination to International Law and the Constitution of the United States.

Beside the essential equity of such submission, and the moral dignity it would confer upon the Republic, which rises when it stoops to Law, there are two other reasons of irresistible force at this moment. I need not remind you that the Senate is now occupied in considering how to suppress lawlessness within our own borders and to save the African race from outrage. Surely our efforts at home must be weakened by the drama we are now playing abroad. Pray, Sir, with what face can we insist upon obedience to Law and respect for the African race, while we are openly engaged in lawlessness on the coasts of San Domingo and outrage upon the African race represented by the Black Republic? How can we expect to put down the Ku-Klux at the South, when we set in motion another proceeding kin-

dred in constant insubordination to Law and Constitution? Differing in object, the two are identical in this insubordination. One strikes at national life and the other at individual life, while both strike at the African race. One molests a people, the other a community. Lawlessness is the common element. But it is difficult to see how we can condemn, with proper, whole-hearted reprobation, our own domestic Ku-Klux, with its fearful outrages, while the President puts himself at the head of a powerful and costly proceeding operating abroad in defiance of International Law and the Constitution of the United States. These are questions which I ask with sorrow, and only in obedience to that truth which is the requirement of this debate. Nor should I do otherwise than fail in justice to the occasion, if I did not declare my unhesitating conviction, that, had the President been so inspired as to bestow upon the protection of Southern Unionists, white and black, one half, nay, Sir, one quarter, of the time, money, zeal, will, personal attention, personal effort, and personal intercession, which he has bestowed on his attempt to obtain half an island in the Caribbean Sea, our Southern Ku-Klux would have existed in name only, while tranquillity reigned everywhere within our borders. [*Applause in the galleries.*]

THE VICE-PRESIDENT. The Senator from Massachusetts will suspend. — The Chair cannot consent that there shall be manifestations of approval or disapproval in the galleries; and he reprehends one as promptly as the other. If they are repeated, the Chair must enforce the order of the Senate. — The Senator from Massachusetts will resume.

MR. SUMNER. Another reason for retracing the false

steps already taken will be found in our duty to the African race, of whom there are four millions within our borders, recognized as equal before the Law. To these new-found fellow-citizens, once degraded and trampled down, are we bound by every sentiment of justice; nor can we see their race dishonored anywhere through our misconduct. How vain are professions in their behalf, if we set the example of outrage! How vain to expect their sympathy and coöperation in the support of the National Government, if the President, by his own mere will, and in the plenitude of kingly prerogative, can strike at the independence of the Black Republic, and degrade it in the Family of Nations! All this is a thousand times wrong. It is a thousand times impolitic also; for it teaches the African race that they are only victims for sacrifice.

Now, Sir, as I desire the suppression of the Ku-Klux wherever it shows itself, and as I seek the elevation of the African race, I insist that the Presidential scheme, which instals a new form of lawlessness on the coasts of San Domingo, and which at the same time insults the African race represented in the Black Republic, shall be arrested. I speak now against that lawlessness on the coasts of San Domingo, of which the President is the head; and I speak also for the African race, which the President has trampled down. Is there any Senator in earnest against the Ku-Klux? Let him arrest the present lawlessness on the coasts of San Domingo. Is there any Senator ready at all times to seek the elevation of the African race? Here is the occasion for his best efforts.

On the question of acquisition I say nothing to-day, only alluding to certain points involved. Sometimes it

is insisted that emigrants will hurry in large numbers to this tropical island when once annexed, and thus swell its means; but this allegation forgets, that, according to the testimony of History, peaceful emigration travels with the sun on parallels of latitude, and not on meridians of longitude, mainly following the isothermal line, and not turning off at right-angles, whether North or South. Sometimes it is insisted that it will be better for the people of this island, if annexed to our Republic; but this allegation forgets the transcendent question, Whether it is better for them, better for the African race, better for Civilization, that the Black Republic should be absorbed out of sight, instead of being fostered into a successful example of self-government for the redemption of the race, not only on the Caribbean islands, but on the continent of Africa? Then, again, arises that other question, Whether we will assume the bloody hazards involved in this business, as it has been pursued, with the alternative of expenditures for war-ships and troops, causing most painful anxieties, while the land of Toussaint L'Ouverture listens to the constant whisper of Independence? And there is still that other question of debts and obligations, acknowledged and unacknowledged, with an immense claim by Hayti and an unsettled boundary, which I have already called a bloody lawsuit.

Over all is that other question, Whether we will begin a system, which, first fastening upon Dominica, must, according to the admission of the plenipotentiary Fabens made to myself, next take Hayti, and then in succession the whole tropical group of the Caribbean Sea, — so that we are now to determine if all the islands of the West Indies shall be a component part of our

Republic, helping to govern us, while the African race is dispossessed of its natural home in this hemisphere. No question equal in magnitude, unless it be that of Slavery, has arisen since the days of Washington.

These questions I state only. Meanwhile to my mind there is something better than belligerent intervention and acts of war with the menace of absorption at untold cost of treasure. It is a sincere and humane effort on our part, in the spirit of peace, to reconcile Hayti and Dominica, and to establish tranquillity throughout the island. Let this be attempted, and our Republic will become an example worthy of its name and of the civilization which it represents, while Republican Institutions have new glory. The blessings of good men will attend such an effort; nor can the smile of Heaven be wanting.

And may we not justly expect the President to unite in such a measure of peace and good-will? He that ruleth his spirit is greater than he that taketh a city; and so the President, ruling his spirit in subjection to the humane principles of International Law and the Constitution of his country, will be greater than if he had taken all the islands of the sea.

The Commission appointed under the Joint Resolution visited San Domingo, and their Report, which was favorable to the proposed annexion, the President communicated to Congress; but no further action was taken to carry the scheme into effect.

PERSONAL RELATIONS WITH THE PRESIDENT AND SECRETARY OF STATE.

AN EXPLANATION IN REPLY TO AN ASSAULT.

STATEMENT PREPARED FOR PRESENTATION IN THE SENATE, MARCH, 1871.

Si rixa est, ubi tu pulsas, ego vapulo tantum.
Stat contra, starique jubet ; parere necesse est.
Nam quid agas, cum te furiosus cogat, et idem
Fortior ?

JUVENAL, *Sat.* III. 289–92.

TO THE READER.

THIS statement was prepared in March, shortly after the debate in the Senate, but was withheld at that time, from unwillingness to take part in the controversy, while able friends regarded the question of principle involved as above every personal issue. Yielding at last to various pressure, Mr. Sumner concluded to present it at the recent called session of the Senate, but the Treaty with Great Britain and the case of the Newspaper Correspondents were so engrossing as to leave no time for anything else.

WASHINGTON, June, 1871.

NOTE.

WITH the failure of an opportunity for the presentation of the proposed statement in the Senate Mr. Sumner's indisposition to appeal to the public returned with increased strength, manifested, after printing, by limiting the communication of copies to personal friends, with the inscription, "Unpublished, — private and confidential, — not to go out of Mr. ——'s hands."

Says one to whom it was thus confided: "I frequently urged him afterwards to make it public. His reply was, in substance, that he should not do it for personal vindication merely; that, so far as Mr. Motley was concerned, he thought the matter stood well enough before the public; but if the time should come when the ends of justice required its publication, he should remove the injunction of secrecy. While he lived I respected his injunction. After his death I felt that justice to his memory not only justified, but required me to make the 'Explanation' public. . . . . Accordingly, after conferring with Mr. Whitelaw Reid, of the 'New York Tribune,' I sent it to him, and it was published in that journal of April 6, 1874." — F. W. BIRD, *Introductory* to his pamphlet edition, Boston and New York, 1878.

The seal having been thus broken, there can obviously no longer be question as to the propriety of including an article of such high interest and importance in a collection of Mr. Sumner's Works; and it accordingly here follows in due course.

As one consequence of the leading part taken by Mr. Sumner in opposition to the scheme for the annexation of San Domingo to the United States, the friends of that scheme formed the determination to depose him from the influential position long held by him as Chairman of the Committee on Foreign Relations. In pursuance of this determination, at the opening of the Session of 1871, on a vote, March 10th, to proceed to the election of the Standing Committees, Mr. Howe, of Wisconsin, as the organ of a Senatorial Caucus on the subject, sent to the Chair a list which had been agreed upon, with the name of Mr. Cameron, of Pennsylvania, substituted for that of Mr. Sumner, at the head of the Committee in question, — alleging, as the reason for this change, "that the personal relations existing between the Senator from Massachusetts and the President of the United States and the head of the State Department were such as precluded all social intercourse between them." Thereupon ensued the debate referred to in the prefatory note to the following paper, and characterized in the text as Mr. Sumner's "trial before the Senate on articles of impeachment."[1]

[1] For this debate, and the attendant proceedings, see Congressional Globe, 42d Cong. 1st Sess., pp. 33–53.

STATEMENT.

WHILE I was under trial before the Senate, on articles of impeachment presented by the Senator from Wisconsin, [Mr. HOWE,] I forbore taking any part in the debate, even in reply to allegations, asserted to be of decisive importance, touching my relations with the President and Secretary of State. All this was trivial enough; but numerous appeals to me from opposite parts of the country show that good people have been diverted by these allegations from the question of principle involved. Without intending in any way to revive the heats of that debate, I am induced to make a plain statement of facts, so that the precise character of those relations shall be known. I do this with unspeakable reluctance, but in the discharge of a public duty where the claims of patriotism are above even those of self-defence. The Senate and the country have an interest in knowing the truth of this matter, and so also has the Republican party, which cannot be indifferent to pretensions in its name; nor will anything but the completest frankness be proper for the occasion.

In overcoming this reluctance I am aided by Senators who are determined to make me speak. The Senator from Wisconsin, [Mr. HOWE,] who appears as prosecuting officer, after alleging these personal relations as the

gravamen of accusation against me, — making the issue pointedly on this floor, and actually challenging reply, — not content with the opportunity of this Chamber, hurried to the public press, where he repeated the accusation, and now circulates it, as I am told, under his frank, crediting it in formal terms to the liberal paper in which it appeared, but without allusion to the editorial refutation which accompanied it. On still another occasion, appearing still as prosecuting officer, the same Senator volunteered, out of his own invention, to denounce me as leaving the Republican party, — and this he did, with infinite personality of language and manner, in the very face of my speech to which he was replying, where, in positive words, I declare that I speak "for the sake of the Republican party," which I hope to save from responsibility for wrongful acts, and then, in other words making the whole assumption of the Senator an impossibility, I announce, that in speaking for the Republican party it is "because from the beginning I have been the faithful servant of that party and aspire to see it strong and triumphant."[1] In the face of this declared aspiration, in harmony with my whole life, the Senator delivered his attack, and, assuming to be nothing less than Pope, launched against me his bull of excommunication. Then, again playing Pope, he took back his thunder, with the apology that others thought so, and this alleged understanding of others he did not hesitate to set above my positive and contemporaneous language that I aspired to see the Republican party strong and triumphant. Then came the Senator from Ohio, [Mr. SHERMAN,] who, taking up his vacation pen, added to the articles of impeachment by a supplementary allega-

[1] Speech in the Senate, March 27, 1871, — *ante*, p. 19.

tion, adopted by the Senator under a misapprehension of facts. Here was another challenge. During all this time I have been silent. Senators have spoken, and then rushed into print; but I have said nothing. They have had their own way with regard to me. It is they who leave me no alternative.

It is alleged that I have no personal relations with the President. Here the answer is easy. I have precisely the relations which he has chosen. On reaching Washington in December last, I was assured from various quarters that the White House was angry with me; and soon afterward the public journals reported the President as saying to a Senator, that, if he were not President, he "would call me to account." What he meant I never understood, nor would I attribute to him more than he meant; but that he used the language reported I have no doubt, from information independent of the newspapers. I repeat that on this point I have no doubt. The same newspapers reported, also, that a member of the President's household, enjoying his peculiar confidence, taking great part in the San Domingo scheme, had menaced me with personal violence. I could not believe the story, except on positive, unequivocal testimony. That the menace was made on the condition of his not being an Army officer I do not doubt. The member of the household, when interrogated by my excellent colleague, [Mr. WILSON,] positively denied the menace; but I am assured, on authority above question, that he has since acknowledged it, while the President still retains him in service, and sends him to this Chamber.

During this last session, I have opposed the Presiden-

tial policy on an important question, — but always without one word touching motives, or one suggestion of corruption on his part, although I never doubted that there were actors in the business who could claim no such immunity. It now appears that Fabens, who came here as plenipotentiary to press the scheme, has concessions to such amount that the diplomatist is lost in the speculator. I always insisted that the President was no party to any such transaction. I should do injustice to my own feelings, if I did not here declare my regret that I could not agree with the President. I tried to think as he did, but I could not. I listened to the arguments on his side, but in vain. The adverse considerations multiplied with time and reflection. To those who know the motives of my life it is superfluous for me to add that I sought simply the good of my country and Humanity, including especially the good of the African race, to which our country owes so much.

Already there was anger at the White House when the scheme to buy and annex half an island in the Caribbean Sea was pressed upon the Senate in legislative session under the guise of appointing a Commission, and it became my duty to expose it. Here I was constrained to show how, at very large expense, the usurper Baez was maintained in power by the Navy of the United States to enable him to sell his country, while at the same time the independence of the Black Republic was menaced, — all of which was in violation of International Law, and of the Constitution of the United States, which reserves to Congress the power "to declare war." What I said was in open debate, where the record will speak for me. I hand it over to the most careful scrutiny, knowing that the President can take

no just exception to it, unless he insists upon limiting proper debate, and boldly denies the right of a Senator to express himself freely on great acts of wrong. Nor will any Republican Senator admit that the President can impose his own sole will upon the Republican party. Our party is in itself a Republic with universal suffrage, and until a measure is adopted by the party no Republican President can make it a party test.

Much as I am pained in making this statement with regard to the President, infinitely more painful to me is what I must present with regard to the Secretary of State. Here again I remark that I am driven to this explanation. His strange and unnatural conduct toward me, and his prompting of Senators, who, one after another, have set up my alleged relations with him as ground of complaint, make it necessary for me to proceed.

We were sworn as Senators on the same day, as far back as 1851, and from that distant time were friends until the San Domingo business intervened. Nothing could exceed our kindly relations in the past. On the evening of the inauguration of General Grant as President, he was at my house with Mr. Motley in friendly communion, and all uniting in aspirations for the new Administration. Little did Mr. Motley or myself imagine in that social hour that one of our little circle was so soon to turn upon us both.

Shortly afterward Mr. Fish became Secretary of State, and began his responsible duties by appealing to me for help. I need not say that I had pleasure in responding to his call, and that I did what I could most sincerely and conscientiously to aid him. Of much, from his ar-

rival down to his alienation on the San Domingo business, I possess the written record. For some time he showed a sympathy with the scheme almost as little as my own. But as the President grew in earnestness the Secretary yielded, until tardily he became its attorney. Repeatedly he came to my house, pleading for the scheme. Again and again he urged it, sometimes at my house and sometimes at his own. I was astonished that he could do so, and expressed my astonishment with the frankness of old friendship. For apology he announced that he was the President's friend, and took office as such. "But," said I, "you should resign rather than do this thing." This I could not refrain from remarking, on discovery, from dispatches in the State Department, that the usurper Baez was maintained in power by our Navy. This plain act of wrong required instant redress; but the Secretary astonished me again by his insensibility to my appeal for justice. He maintained the President, as the President maintained Baez. I confess that I was troubled.

At last, some time in June, 1870, a few weeks before the San Domingo treaty was finally rejected by the Senate, the Secretary came to my house about nine o'clock in the evening and remained till after the clock struck midnight, the whole protracted visit being occupied in earnest and reiterated appeal that I should cease my opposition to the Presidential scheme; and here he urged that the election which made General Grant President had been carried by him, and not by the Republican party, so that his desires were entitled to especial attention. In his pressure on me he complained that I had opposed other projects of the President. In reply to my inquiry, he named the repeal of the Tenure-of-

Office Act, and the nomination of Mr. Jones as Minister to Brussels, both of which the President had much at heart, and he concluded with the San Domingo treaty. I assured the Secretary firmly and simply, that, seeing the latter as I did with all its surroundings, my duty was plain, and that I must continue to oppose it so long as it appeared to me wrong. He was not satisfied, and renewed his pressure in various forms, returning to the point again and again with persevering assiduity that would not be arrested, when at last, finding me inflexible, he changed his appeal, saying, "Why not go to London? I offer you the English mission. It is yours." Of his authority from the President I know nothing. I speak only of what he said. My astonishment was heightened by indignation at this too palpable attempt to take me from my post of duty; but I suppressed the feeling which rose to the lips, and, reflecting that he was an old friend and in my own house, answered gently, "We have a Minister there who cannot be bettered." Thus already did the mission to London begin to pivot on San Domingo.

I make this revelation only because it is important to a correct understanding of the case, and because the conversation from beginning to end was official in character, relating exclusively to public business, without suggestion or allusion of a personal nature, and absolutely without the slightest word on my part leading in the most remote degree to any such overture, which was unexpected as undesired. The offer of the Secretary was in no respect a compliment or kindness, but in the strict line of his endeavor to silence my opposition to the San Domingo scheme, as is too apparent from the facts, while it was plain, positive, and unequivocal, mak-

ing its object and import beyond question. Had it been merely an inquiry, it were bad enough, under the circumstances; but it was direct and complete, as by a plenipotentiary.

Shortly afterward, being the day immediately following the rejection of the San Domingo treaty, Mr. Motley was summarily removed,—according to present pretence, for an offending not only trivial and formal, but condoned by time, being a year old: very much as Sir Walter Raleigh, after being released from the Tower to conduct a distant expedition as admiral of the fleet, was at his return beheaded on a judgment of fifteen years' standing. The Secretary, in conversation and in correspondence with me, undertook to explain the removal, insisting for a long time that he was "the friend of Mr. Motley"; but he always made the matter worse, while the heats of San Domingo entered into the discussion.

At last, in January, 1871, a formal paper justifying the removal and signed by the Secretary was laid before the Senate.[1] Glancing at this document, I found, to my surprise, that its most salient characteristic was constant vindictiveness toward Mr. Motley, with effort to wound his feelings; and this was signed by one who had sat with him at my house in friendly communion and common aspiration on the evening of the inauguration of General Grant, and had so often insisted that he was "the friend of Mr. Motley,"—while, as if it was not enough to insult one Massachusetts citizen in the public service, the same document, after a succession of flings and sneers, makes a kindred assault on me; and this is signed by one who so constantly called me "friend,"

[1] Mr. Fish to Mr. Moran, December 30, 1870; Recall of Minister Motley: Executive Documents, 41st Cong. 3d Sess., Senate, No. 11, pp. 27, seqq.

and asked me for help. The Senator from Missouri [Mr. SCHURZ] has already directed attention to this assault, and has expressed his judgment upon it, — confessing that he "should not have failed to feel the insult," and then exclaiming, with just indignation, "When such things are launched against any member of this body, it becomes the American Senate to stand by him, and not to attempt to disgrace and to degrade him because he shows the sensitiveness of a gentleman."[1] It is easy to see how this Senator regarded the conduct of the Secretary. Nor is its true character open to doubt, especially when we consider the context, and how this full-blown personality naturally flowered out of the whole document.

Mr. Motley, in his valedictory to the State Department, had alluded to the rumor that he was removed on account of my opposition to the San Domingo treaty. The document signed by the Secretary, while mingling most offensive terms with regard to his "friend" in London, thus turns upon his "friend" in Washington: —

"It remains only to notice Mr. Motley's adoption of a rumor which had its origin in this city in a source bitterly, personally, and vindictively hostile to the President.

"Mr. Motley says it has been rumored that he was 'removed from the post of Minister to England' on account of the opposition made by an 'eminent Senator, who honors me [him] with his friendship,' to the San Domingo treaty.

"Men are apt to attribute the causes of their own failures or their own misfortunes to others than themselves, and to claim association or seek a partnership with real or imaginary greatness with which to divide their sorrows or their mistakes. There can be no question as to the identity of the eminent

[1] Debate of March 10, 1871: Congressional Globe, p. 36, col. 2.

Senator at whose door Mr. Motley is willing to deposit the cause of his removal. But he is entirely mistaken in seeking a vicarious cause of his loss in confidence and favor; and it is unworthy of Mr. Motley's real merit and ability, and an injustice to the venerable Senator alluded to, (*to whose influence and urgency he was originally indebted for his nomination,*) to attribute to him any share in the cause of his removal.

"Mr. Motley must know, or, if he does not know it, he stands alone in his ignorance of the fact, that many Senators opposed the San Domingo treaty *openly, generously, and with as much efficiency as did the distinguished Senator to whom he refers, and have nevertheless continued to enjoy the undiminished confidence and the friendship of the President,* — than whom no man living is more tolerant of honest and manly differences of opinion, is more single or sincere in his desire for the public welfare, is more disinterested or regardless of what concerns himself, is more frank and confiding in his own dealings, *is more sensitive to a betrayal of confidence, or would look with more scorn and contempt upon one who uses the words and the assurances of friendship to cover a secret and determined purpose of hostility.*"[1]

The eulogy of the President here is at least singular, when it is considered that every dispatch of the Secretary of State is by order of the President; but it is evident that the writer of this dispatch had made up his mind to set all rule at defiance. If, beyond paying court to the President, even at the expense of making him praise himself, the concluding sentence of this elaborate passage, so full of gall from beginning to end, had any object, if it were anything but a mountain of words, it was an open attempt to make an official document the

[1] Mr. Fish to Mr. Moran, December 30, 1870: Executive Documents, 41st Cong. 3d Sess., Senate, No. 11, pp. 36–37.

vehicle of personal insult to me; and this personal insult was signed "HAMILTON FISH." As I became aware of it, and found also that it was regarded by others in the same light, I was distressed and perplexed. I could not comprehend it. I knew not why the Secretary should step so far out of his way, in a manner absolutely without precedent, to treat me with ostentatious indignity, — especially when I thought that for years I had been his friend, that I had never spoken of him except with kindness, and that constantly since assuming his present duties he had turned to me for help. This was more incomprehensible when I considered how utterly groundless were all his imputations. I have lived in vain, if such an attempt on me can fail to rebound on its author.

Not lightly would I judge an ancient friend. For a time I said nothing to anybody of the outrage, hoping that perhaps the Secretary would open his eyes to the true character of the document he had signed and volunteer some friendly explanation. Meanwhile a proposition to resume negotiations was received from England, and the Secretary, it seems, desired to confer with me on the subject; but there was evident consciousness on his part that he had done wrong, — for, instead of coming to me at once, he sent for Mr. Patterson, of the Senate, and, telling him that he wished to confer with me, added, that he did not know precisely what were his relations with me and how I should receive him. Within a brief fortnight I had been in conference with him at the State Department and had dined at his house, besides about the same time making a call there. Yet he was in doubt about his relations with me. Plainly because, since the conference, the dinner, and the call, the

document signed by him had been communicated to the Senate, and the conscience-struck Secretary did not know how I should take it. Mr. Patterson asked me what he should report. I replied, that, should the Secretary come to my house, he would be received as an old friend, and that at any time I should be at his service for consultation on public business, but that I could not conceal my deep sense of personal wrong received from him absolutely without reason or excuse. That this message was communicated by Mr. Patterson I cannot doubt, — for the Secretary came to my house, and there was a free conference. How frankly I spoke on public questions, without one word on other things, the Secretary knows. He will remember if any inquiry, remark, or allusion escaped from me, except in reference to public business. The interview was of business and nothing else.

On careful reflection, it seemed to me plain, that, while meeting the Secretary officially, it would not be consistent with self-respect for me to continue personal relations with one who had put his name to a document, which, after protracted fury toward another, contained a studied insult to me, where the fury was intensified rather than tempered by too obvious premeditation. Public business must not suffer, but in such a case personal relations naturally cease; and this rule I have followed since. Is there any Senator who would have done less? Are there not many who would have done more? I am at a loss to understand how the Secretary could expect anything beyond those official relations which I declared my readiness at all times to maintain, and which, even after his assault on me, he was willing to seek at my own house. To expect more shows on

his part grievous insensibility to the thing he had done. Whatever one signs he makes his own; and the Secretary, when he signed this document, adopted a libel upon his friend, and when he communicated it to the Senate he published the libel. Nothing like it can be shown in the history of our Government. It stands alone. The Secretary is alone. Like Jean Paul in German literature, his just title will be "The Only One." For years I have known Secretaries of State and often differed from them, but never before did I receive from one anything but kindness. Never before did a Secretary of State sign a document libelling an associate in the public service, and publish it to the world. Never before did a Secretary of State so entirely set at defiance every sentiment of friendship. It is impossible to explain this strange aberration, except from the disturbing influence of San Domingo. But whatever its origin, its true character is beyond question.

As nothing like this state-paper can be shown in the history of our Government, so also nothing like it can be shown in the history of other Governments. Not an instance can be named in any country, where a personage in corresponding official position has done such a thing. The American Secretary is alone, not only in his own country, but in all countries; "none but himself can be his parallel." Seneca, in the "Hercules Furens," has pictured him:—

> "Quæris Alcidæ parem?
> Nemo est, nisi ipse."

He is originator and first inventor, with all prerogatives and responsibilities thereto belonging.

I have mentioned only one sally in this painful document; but the whole, besides its prevailing offensive-

ness, shows inconsistency with actual facts of my own knowledge, which is in entire harmony with the recklessness toward me, and attests the same spirit throughout. Thus, we have the positive allegation that the death of Lord Clarendon, June 27, 1870, "*determined the time* for inviting Mr. Motley to make place for a successor," [1] when, in point of fact, some time before his Lordship's illness even, the Secretary had invited me to go to London as Mr. Motley's successor, — thus showing that the explanation of Lord Clarendon's death was an after-thought, when it became important to divert attention from the obvious dependence of the removal upon the defeat of the San Domingo treaty.

A kindred inconsistency arrested the attention of the London "Times," in its article of January 24, 1871, on the document signed by the Secretary. Here, according to this journal, the document supplied the means of correction, since it set forth that on the 25th June, two days before Lord Clarendon's death, Mr. Motley's coming removal was announced in a London journal. After stating the alleged dependence of the removal upon the death of Lord Clarendon, the journal, holding the scales, remarks: "And yet there is at least one circumstance, appearing, *strange to say,* in Mr. Fish's own dispatch, which is *not quite consistent* with the explanation he sets up of Mr. Motley's recall." Then, after quoting from the document, and mentioning that its own correspondent at Philadelphia did on the 25th June "send us a message that Mr. Motley was about to be withdrawn," the journal mildly concludes, that, "as this was two days before Lord Clarendon's death, which was unforeseen here and could not have been expected in

[1] Mr. Fish to Mr. Moran: Ex. Doc., *ut supra,* p. 37.

the States, *it is difficult to connect the resolution to supersede the late American Minister with the change at our Foreign Office.*" The difficulty of the "Times" is increased by the earlier incident with regard to myself.

Not content with making the removal depend upon the death of Lord Clarendon, when it was heralded abroad not only before the death of this minister had occurred, but while it was yet unforeseen, the document seeks to antedate the defeat of the San Domingo treaty, so as to interpose "weeks and months" between the latter event and the removal. The language is explicit. "The treaty," says the document, "*was admitted* to be practically dead, and was waiting only the formal action of the Senate, *for weeks and months* before the decease of the illustrious statesman of Great Britain."[1] Weeks and months! And yet during the last month, when the treaty "was admitted to be practically dead," the Secretary who signed the document passed three hours at my house, pleading with me to withdraw my opposition, and finally wound up by tender to me of the English mission, with no other apparent object than simply to get me out of the way.

Then again we have the positive allegation that the President embraced an opportunity "to prevent any further misapprehension of his views through Mr. Motley by taking from him the right to discuss further the 'Alabama claims'";[2] whereas the Secretary in a letter to me at Boston, dated at Washington, October 9, 1869, informs me that the discussion of the question was withdrawn from London "*because*" (the Italics are the Secretary's) "we think, that, when renewed, it can be

[1] Mr. Fish to Mr. Moran: Ex. Doc., *ut supra*, p. 37.
[2] Ibid., p. 32.

carried on here with a better prospect of settlement than where the late attempt at a convention which resulted so disastrously and was conducted so strangely was had"; and what the Secretary thus wrote he repeated in conversation when we met, carefully making the transfer to Washington depend upon our advantage here from the presence of the Senate: thus showing that the pretext put forth to wound Mr. Motley was an after-thought.

Still further, the document signed by the Secretary alleges, by way of excuse for removing Mr. Motley, the "important public consideration of having a representative in sympathy with the President's views";[1] whereas, when the Secretary tendered the mission to me, no allusion was made to "sympathy with the President's views," while Mr. Motley, it appears, was charged with agreeing too much with me: all of which shows how little this matter had to do with the removal, and how much the San Domingo business at the time was above any question of conformity on other things.

In the amiable passage already quoted[2] there is a parenthesis which breathes the prevailing spirit. By way of aspersion on Mr. Motley and myself, the country is informed that he was indebted for his nomination to "influence and urgency" on my part. Of the influence I know nothing; but I deny positively any "urgency." I spoke with the President on this subject once casually on the stairs of the Executive Mansion, and then again in a formal interview. And here, since the effort of the Secretary, I shall frankly state what I said and how it was introduced. I began by remarking, that, with the

[1] Mr. Fish to Mr. Moran: Ex. Doc., *ut supra*, p. 34.
[2] *Ante*, p. 111.

permission of the President, I should venture to suggest the expediency of continuing Mr. Marsh in Italy, Mr. Morris at Constantinople, and Mr. Bancroft at Berlin, as all these exerted a peculiar influence and did honor to our country. To this list I proposed to add Dr. Howe in Greece, believing that he, too, would do honor to our country, and also Mr. Motley in London, who, I suggested, would have an influence there beyond his official position. The President said that nobody should be sent to London who was not "right" on the Claims question, and he kindly explained to me what he meant by "right." From this time I had no conversation with him about Mr. Motley, until after the latter had left for his post, when the President volunteered to express his great satisfaction in the appointment. Such was the extent of my "urgency." Nor was I much in advance of the Secretary at that time; for he showed me what was called the "brief" at the State Department for the English mission, with Mr. Motley's name at the head of the list.

Other allusions to myself would be cheerfully forgotten, if they were not made the pretext to assail Mr. Motley, who is held to severe account for supposed dependence on me. If this were crime, not the Minister, but the Secretary, should suffer; for it is the Secretary, and not the Minister, who appealed to me constantly for help, often desiring me to think for him, and more than once to hold the pen for him. But, forgetting his own relations with me, the Secretary turns upon Mr. Motley, who never asked me to think for him or to hold the pen for him. Other things the Secretary also forgot. He forgot that the blow he dealt, whether at Mr. Motley or myself, rudely tore the veil from the past, so far

as its testimony might be needed in elucidation of the truth; that the document he signed was a challenge and provocation to meet him on the facts without reserve or concealment; that the wantonness of assault on Mr. Motley was so closely associated with that on me, that any explanation I might make must be a defence of him; that, even if duty to the Senate and myself did not require this explanation, there are other duties not to be disregarded, among which is duty to the absent, who cannot be permitted to suffer unjustly, — duty to a much-injured citizen of Massachusetts, who may properly look to a Senator of his State for protection against official wrong, — duty also to a public servant insulted beyond precedent, who, besides writing and speaking most effectively for the Republican party and for this Administration, has added to the renown of our country by unsurpassed success in literature, commending him to the gratitude and good-will of all. These things the Secretary strangely forgot, when he dealt the blow which tore the veil.

The crime of the Minister was dependence on me: so says the state-paper. A simple narrative will show who is the criminal. My early relations with the Secretary have already appeared, and how he began by asking me for help, practising constantly on this appeal. A few details will be enough. At once on his arrival to assume his new duties, he asked my counsel about appointing Mr. Bancroft Davis Assistant Secretary of State, and I advised the appointment, — without sufficient knowledge, I am inclined to believe now. Then followed the questions with Spain growing out of Cuba, which were the subject of constant conference, where he sought me repeatedly and kindly listened to my opin-

ions. Then came the instructions for the English mission, known as the dispatch of May 15, 1869. At each stage of these instructions I was in the counsels of the Secretary. Following my suggestion, he authorized me to invite Mr. Motley in his name to prepare the "memoir" or essay on our claims, which, notwithstanding its entirely confidential character, he drags before the world, for purpose of assault, in a manner clearly unjustifiable. Then, as the dispatch was preparing, he asked my help especially in that part relating to the concession of belligerent rights. I have here the first draught of this important passage in pencil and in my own handwriting, varying in no essential respect from that adopted. Here will be found the distinction on which I have always insisted, — that, while other powers conceded belligerent rights to our Rebels, it was in England only that the concession was supplemented by acts causing direct damage to the United States. Not long afterward, in August, 1869, when the British storm had subsided, I advised that the discussion should be renewed by an elaborate communication, setting forth our case in length and breadth, but without any estimate of damages, — throwing upon England the opportunity, if not the duty, of making some practical proposition. Adopting this recommendation, the Secretary invited me to write the dispatch. I thought it better that it should be done by another, and I named for this purpose an accomplished gentleman whom I knew to be familiar with the question, and he wrote the dispatch. This paper, bearing date September 25, 1869, is unquestionably the ablest in the history of the present Administration, unless we except the last dispatch of Mr. Motley.

In a letter dated at Washington, October 15, 1869, and addressed to me at Boston, the Secretary describes this paper in the following terms:—

"The dispatch to Motley (which I learn by a telegram from him has been received) is a calm, *full* review of our entire case, making no demand, no valuation of damages, but I believe covering all the ground and all the points that have been made on our side. I hope that it will meet your views. I *think* it will. It leaves the question with Great Britain to determine when any negotiations are to be renewed."

The Secretary was right in his description. It was a "*full* review of our entire case," "covering all the ground and all the points"; and it did meet my views, as the Secretary thought it would, especially where it arraigned so strongly that fatal concession of belligerent rights on the ocean, which in any faithful presentment of the national cause will always be the first stage of *evidence*,— since, without this precipitate and voluntary act, the Common Law of England was a positive protection against the equipment of a corsair ship, or even the supply of a blockade-runner for unacknowledged rebels. The conformity of this dispatch with my views was recognized by others besides the Secretary. It is well known that Lord Clarendon did not hesitate in familiar conversation to speak of it as "Mr. Sumner's speech over again"; while another English personage said that "it out-Sumnered Sumner." And yet, with his name signed to this dispatch, written at my suggestion, and in entire conformity with my views, as admitted by him and recognized by the English Government, the Secretary taunts Mr. Motley for supposed harmony with me on this very question. This taunt is still more unnatural when it is known that this dispatch is in similar

conformity with the "memoir" of Mr. Motley, and was evidently written with knowledge of that admirable document, where the case of our country is stated with perfect mastery. But the story does not end here.

On the communication of this dispatch to the British Government, Mr. Thornton was instructed to ascertain what would be accepted by our Government, when the Secretary, under date of Washington, November 6, 1869, reported to me this application, and then, after expressing unwillingness to act on it until he "could have an opportunity of consulting" me, he wrote, "When will you be here? Will you either note what you think will be sufficient to meet the views of the Senate and of the country, or *will you formulate such proposition?*" After this responsible commission, the letter winds up with the earnest request, "Let me hear from you *as soon as you can*," (the Italics are the Secretary's,) "and I should like to confer with you at the earliest convenient time." On my arrival at Washington, the Secretary came to my house at once, and we conferred freely. San Domingo had not yet sent its shadow into his soul.

It is easily seen that here was constant and reiterated appeal to me, especially on our negotiations with England; and yet, in the face of this testimony, where he is the unimpeachable witness, the Secretary is pleased to make Mr. Motley's supposed relations with me the occasion of insult to him, while, as if this were not enough, he crowns his work with personal assault on me, — all of which, whether as regards Mr. Motley or me, is beyond comprehension.

How little Mr. Motley merited anything but respect and courtesy from the Secretary is attested by all who

know his eminent position in London, and the service he rendered to his country. Already the London press, usually slow to praise Americans when strenuous for their country, has furnished its voluntary testimony. The "Daily News" of August 16, 1870, spoke of the insulted Minister in these terms: —

"We are violating no confidence in saying that all the hopes and promises of Mr. Motley's official residence in England have been amply fulfilled, and that the announcement of his unexpected and unexplained recall was received with extreme astonishment and unfeigned regret. The vacancy he leaves cannot possibly be filled by a Minister more sensitive to the honor of his Government, more attentive to the interests of his country, and more capable of uniting the most rigorous performance of his public duties with the high-bred courtesy and the conciliatory tact and temper that make those duties easy and successful. Mr. Motley's successor will find his mission wonderfully facilitated by the firmness and discretion that have presided over the conduct of American affairs in this country during too brief a term, too suddenly and unaccountably concluded."

The London press had not the key to this extraordinary transaction. It knew not the potency of the San Domingo spell, nor its strange influence over the Secretary, even breeding insensibility to instinctive amenities, and awakening peculiar unfriendliness to Mr. Motley, so amply certified afterward in an official document under his own hand, — all of which burst forth with more than the tropical luxuriance of the much-coveted island.

I cannot disguise the sorrow with which I offer this explanation. In self-defence and for the sake of truth

do I now speak. I have cultivated forbearance, and hoped from the bottom of my heart that I might do so to the end. But beyond the call of the public press has been the defiant challenge of Senators, and also the consideration sometimes presented by friends, that my silence might be misinterpreted. Tardily and most reluctantly I make this record, believing it more a duty to the Senate than to myself, but a plain duty, to be performed in all simplicity without reserve. Having nothing to conceal, and willing always to be judged by the truth, I court the fullest inquiry, and shrink from no conclusion founded on an accurate knowledge of the case.

If this narration enables any one to see in clearer light the injustice done to Mr. Motley, then have I performed a further duty too long postponed; nor will it be doubted by any honest nature, that, since the assault of the Secretary, he was entitled to that vindication which is found in a statement of facts within my own knowledge. Anything short of this would be a license to the Secretary in his new style of state-paper, which, for the sake of the public service and of good-will among men, must be required to stand alone, in the isolation which becomes its abnormal character. Plainly without precedent in the past, it must be without chance of repetition in the future.

Here I stop. My present duty is performed when I set forth the simple facts, exhibiting those personal relations which have been drawn in question, without touching the questions of principle behind.

THE KU-KLUX-KLAN.

SPEECH IN THE SENATE, ON THE BILL TO ENFORCE THE PROVISIONS OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION, APRIL 13, 1871.

MR. PRESIDENT, — The questions presented in this debate have been of fact and of Constitutional Law. It is insisted on one side that a condition of things exists in certain States affecting life, liberty, property, and the enjoyment of Equal Rights, which can be corrected only by the national arm. On the other side this statement is controverted, and it is argued also that such intervention is inconsistent with the Constitution of the United States. On both questions, whether of fact or law, I cannot hesitate. To my mind, outrages are proved, fearful in character; nor can I doubt the power under the Constitution to apply the remedy.

The evidence is cumulative. Ruffians in paint and in disguise seize the innocent, insult them, rob them, murder them. Communities are kept under this terrible shadow. And this terror falls especially upon those who have stood by the Union in its bloody trial, and those others of different color who have just been admitted to the blessings of Freedom. To both of these classes is our nation bound by every obligation of public

faith. We cannot see them sacrificed without apostasy. If the power to protect them fails, then is the National Constitution a failure.

I do not set forth the evidence, for this has been amply done by others, and to repeat it would be only to occupy time and to darken the hour. The Report of the Committee, at least as regards one State,[1] the testimony of the public press, the stories of violence with which the air is laden, and private letters with their painful narrations, — all these unite, leaving no doubt as to the harrowing condition of things in certain States lately in rebellion, — not the same in all these States or in all parts of a State, but such as to show in many States the social fabric menaced, disturbed, imperilled in its very foundations, while life, liberty, property, and the enjoyment of Equal Rights are without that security which is the first condition of civilization. This is the case simply stated. If such things can be without a remedy, applied, if need be, by the national arm, then are we little more than a bundle of sticks, but not a nation. Believing that we are a nation, I cannot doubt the power and the duty of the National Government. Thus on general grounds do I approach the true conclusion.

So long as Slavery endured a State was allowed to play the turtle, and, sheltered within its shell, to escape the application of those master principles which are truly national. The Declaration of Independence with its immortal truths was in abeyance; the Constitution itself was interpreted always in support of Slavery. I never doubted that this interpretation was wrong, — not

[1] Report of Select Committee to investigate the alleged Outrages in the Southern States, — North Carolina: Senate Reports, 42d Cong. 1st Sess., No. 1.

even in the days of Slavery; but it is doubly, triply wrong now that the Declaration of Independence is at last regarded, and that the Constitution not only makes Slavery impossible, but assures the citizen in the enjoyment of Equal Rights. I do not quote these texts, whether of the Declaration or the Constitution. You know them by heart. But they are not vain words. Vital in themselves, they are armed with all needful powers to carry them into execution. As in other days Slavery gave its character to the Constitution, filling it with its own denial of Equal Rights, and compelling the National Government to be its instrument, so now do I insist that Liberty must give its character to the Constitution, filling it with life-giving presence, and compelling the National Government to be its instrument. Once the Nation served Slavery, and in this service ministered to State Rights; now it must serve Liberty with kindred devotion, even to the denial of State Rights. All this I insist is plain, according to rules of interpretation simple and commanding.

In other days, while the sinister influence prevailed, the States were surrounded by a Chinese wall so broad that horsemen and chariots could travel upon it abreast; but that wall has now been beaten down, and the citizen everywhere is under the protection of the same Equal Laws, not only without distinction of color, but also without distinction of State.

What makes us a Nation? Not armies, not fleets, not fortifications, not commerce reaching every shore abroad, not industry filling every vein at home, not population thronging the highways; none of these make our Nation. The national life of this Republic is found in the principle of Unity, and in the Equal Rights of all

our people, — all of which, being national in character, are necessarily placed under the great safeguard of the Nation. Let the National Unity be assailed, and the Nation will spring to its defence. Let the humblest citizen in the remotest village be assailed in the enjoyment of Equal Rights, and the Nation must do for that humblest citizen what it would do for itself. And this is only according to the original promises of the Declaration of Independence, and the more recent promises of the Constitutional Amendments, the two concurring in the same national principles.

Do you question the binding character of the Great Declaration? Then do I invoke the Constitutional Amendments. But you cannot turn from either; and each establishes beyond question the boundaries of national power, making it coextensive with the National Unity and the Equal Rights of All, originally declared and subsequently assured. Whatever is announced in the Declaration is essentially National, and so also is all that is assured. The principles of the Declaration, reinforced by the Constitutional Amendments, cannot be allowed to suffer. Being common to all, they must be under the safeguard of all. Nor can any State set up its local system against the universal law. Equality implies universality; and what is universal must be national. If each State is left to determine the protection of Equal Rights, then will protection vary according to the State, and Equal Rights will prevail only according to the accident of local law. There will be as many equalities as States. Therefore, in obedience to reason, as well as solemn mandate, is this power in the Nation.

Nor am I deterred from this conclusion by any cry of

Centralism, or it may be of Imperialism. These are terms borrowed from France, where this abuse has become a tyranny, subjecting the most distant communities, even in the details of administration, to central control. Mark, if you please, the distinction. But no such tyranny is proposed among us, — nor any interference of any kind with matters local in character. The Nation will not enter the State, except for the safeguard of rights national in character, and then only as the sunshine, with beneficent power, and, like the sunshine, for the equal good of all. As well assail the sun because it is central, because it is imperial. Here is a just centralism; here is a generous imperialism. Shunning with patriotic care that injurious centralism and that fatal imperialism which have been the Nemesis of France, I hail that other centralism which supplies an equal protection to every citizen, and that other imperialism which makes Equal Rights the supreme law, to be maintained by the national arm in all parts of the land. Centralism! Imperialism! Give me the centralism of Liberty! Give me the imperialism of Equal Rights! And may this National Capitol, where we are now assembled, be the emblem of our Nation! Planted on a hill-top, with portals opening North and South, East and West, with spacious chambers, and with arching dome crowned by the image of Liberty, — such is our imperial Republic; but in nothing is it so truly imperial as in that beneficent Sovereignty which rises like a dome crowned by the image of Liberty.

Nor am I deterred by any party cry. The Republican party must do its work, which is nothing less than the regeneration of the Nation according to the promises of the Declaration of Independence. To maintain

the Republic in its unity, and the people in their rights, — such is this transcendent duty. Nor do I fear any political party which assails these sacred promises, even if it falsely assume the name of Democrat. How powerless their efforts against these immortal principles! For myself, I know no better service than that which I now announce. Here have I labored steadfastly from early life, bearing obloquy and enmity; and here again I pledge the energies which remain to me, even if obloquy and enmity survive.

OUR DUTY AGAINST WRONG.

LETTER TO THE REFORM LEAGUE, NEW YORK, MAY 8, 1871.

THIS was read by the President of the League at its first anniversary in Steinway Hall, and reported in the papers.

WASHINGTON, May 8, 1871.

MY DEAR SIR, — It is not in my power to be at your meeting; but when I think that it will be held on the anniversary of the good old Antislavery Society, which was always so apostolic, I pay homage to the day, and thanks to you for remembering me among its friends.

Happily, Slavery is abolished; but, alas! wrong is not banished from the earth, nor has it ceased to be organized in human institutions, or to be maintained by governments.

In considering the question of San Domingo, I am sure you will not forget our duty to the Haytian people, counting by the hundred thousand, who now seek peace with the rest of the island, and would gladly accept our good offices. "Blessed are the peacemakers!" Here is our opportunity to obtain this blessing; but we must begin by stopping our war-dance about the island, kept up at immense cost for more than a year.

Faithfully yours,

CHARLES SUMNER.

A. W. POWELL, ESQ.

POWER OF THE SENATE TO IMPRISON RECUSANT WITNESSES.

SPEECHES IN THE SENATE, MAY 18 AND 27, 1871.

MAY 18, 1871, Z. L. White and H. J. Ramsdell, newspaper correspondents, having been taken into custody by order of the Senate, for refusing to disclose, on the requisition of a committee appointed to investigate the matter, the source whence a copy of the Treaty of Washington had been obtained which they had communicated for publication while under consideration in Executive Session, and Mr. White, whose case was first presented, on arraignment at the bar of the Senate persisting in his refusal, a resolution was thereupon offered for his commitment to the common jail until he should answer. Mr. Sumner immediately moved an amendment substituting for the common jail the custody of the Sergeant-at-Arms, remarking; —

IN support of that amendment I will say that the only precedent we have in our history known to me for this case is that of Nugent,[1] and he was committed to the custody of the Sergeant-at-Arms. It appears from the newspapers of the time that there was a perpetual menace, as the excitement increased, that the custody should be changed to the common jail; but it does not appear that it was so changed. He continued

[1] A case in Executive Session of the Senate, March and April, 1848, relative to the surreptitious procurement and publication of a copy of the Treaty of Guadalupe Hidalgo. For some particulars of this case, see speech entitled "Usurpation of the Senate in imprisoning a Citizen," June 15, 1860, — *ante*, Vol. VI. p. 90, note.

for some two months in the custody of the Sergeant-at-Arms. We all know, also, that after the Impeachment Trial a witness was taken into custody; but it was simply the custody of the Sergeant-at-Arms of the House.[1]

There is one other precedent to which I ought to allude, and it will be for the Senate to say whether they will follow it. It is the resolution of the Senate in the spring of 1860, on the motion of Mr. Mason, chairman of the committee raised especially to persecute the supposed associates of John Brown, and taking one of them into custody, bringing him into this Chamber, propounding to him certain interrogatories which he refused to answer. Mr. Mason finally brought forward a resolution that he should be committed to the common jail.[2] That, Sir, is the precedent which it is now proposed to follow. The Senate will consider whether they will follow the lead of Mr. Mason, author of the Fugitive Slave Bill, Chairman of the Harper's Ferry Investigating Committee, and afterward a Rebel, in committing a citizen to the common jail, or whether they will follow the better precedent of the Senate at a better day and under better auspices.

On this motion I ask for the yeas and nays.

The yeas and nays were ordered, with the result, for the amendment, Yeas 31, Nays 27.

A second resolution, containing a provision for the continuance of the Committee, with a view to holding the witness in custody after the close of the session until he should answer as required, which Mr. Sumner denounced as contrary to all parliamentary precedent, prevailed against a motion to strike out this part by Yeas 20, Nays 30.

[1] Case of Woolley: Congressional Globe, 40th Cong. 2d Sess., House Proceedings, May 25 to June 11, 1868.

[2] Case of Hyatt: Ibid., 36th Cong. 1st Sess., Senate Proceedings, February 21 to June 15, 1860.

Corresponding resolutions were subsequently adopted in the case of Mr. Ramsdell, who had likewise persisted in refusing to answer.

May 27th, on a resolution submitted by Mr. Wilson, of Massachusetts, for the discharge of these persons from custody "immediately upon the final adjournment of the session," Mr. Sumner spoke as follows: —

MR. PRESIDENT, — This question is important, primarily, as it concerns the liberty of the citizen; but it is made important also by the attempt, to which we have just listened, to establish for the Senate a prerogative which on history and precedent does not belong to it.

Some days ago I took the ground, which I shall take to-day, that on the close of the session of the Senate any imprisonment founded on its order must cease. Of that conclusion, whether on history or law, I have not the least doubt. I have listened to the argument of the Senator from New York, [Mr. CONKLING,] and to his comment upon the authorities adduced. The answer, to my mind, is obvious. It will be found simply in stating one of those authorities and calling attention to its precise language. The Senator from Ohio [Mr. SHERMAN] has already presented to-day what I had the honor of quoting on the first day of this discussion, the authoritative words of May in his work on Parliamentary Law, and also the solemn judgment of Lord Denman, Chief-Justice of England. May says, speaking of prisoners committed by order of the House of Commons, that they

"are immediately released from their confinement on a prorogation, whether they have paid the fees or not. If they were held longer in custody, they would be discharged by the courts, upon a writ of *Habeas Corpus*." [1]

[1] Treatise on the Law, Privileges, Proceedings, and Usage of Parliament, (6th edition, London, 1868,) p. 105.

This statement, coming as it does from the well-known Clerk of the House of Commons, as familiar with the usages of that body as any living man, is of itself authority. But he adduces the weighty words of Lord Denman in the most remarkable case of privilege that has ever occurred in English history, being that of Stockdale and Hansard, which, it is well known, was discussed day by day in Parliament, week by week in Westminster Hall. I have before me the opinions of all the judges on that case, but the words that are particularly pertinent now are quoted by May as follows: —

"However flagrant the contempt, the House of Commons can only commit till the close of the existing session," —

Mark, Sir, if you please, how positive he is in his language, —

"can only commit till the close of the existing session. Their privilege to commit is not better known than this limitation of it. Though the party should deserve the severest penalties, yet, his offence being committed the day before a prorogation, if the House ordered his imprisonment but for a week, every court in Westminster Hall and every judge of all the courts would be bound to discharge him by *Habeas Corpus*."[1]

These were the words of the Lord Chief-Justice of England in a most memorable case as late as 1839. This is no ancient authority, but something modern and of our day. It is not expressed in vague or uncertain terms, but in language clear and positive. It is as applicable to the Senate of the United States as to the House of Commons. It is applicable to every legislative body sitting under a constitutional government.

[1] Treatise on the Law, Privileges, Proceedings, and Usage of Parliament, *ut supra*. Stockdale *v.* Hansard, 9 Adolphus & Ellis, R., 114.

An attempt has been made to claim for the Senate prerogatives which belong to the House of Lords. How so? Is the Senate a House of Lords? Is it an hereditary body? Is it a perpetual body in the sense that the House of Lords is a perpetual body? We know that the House of Lords is in session the whole year round. We know, that, according to a rule of the Civil Law, "*Tres faciunt collegium*," [1] three make a quorum in the House of Lords. So that the presence of three peers at any time, duly summoned to the chamber, constitutes a sufficient quorum for business. Therefore the House of Lords has in it an essential element enabling it to come together easily and to continue in perpetual session. It is in its character, in the elements of its privileges, clearly distinguishable from the Senate, as it is clearly distinguishable from the House of Commons. Such privileges as the Senate has are derived from the House of Commons rather than from the House of Lords, so far as they are derived from either of these bodies.

Another attempt has been made, by criticizing the word "prorogation," to find a distinction between the two cases; but a note to May's work on Parliamentary Law, which I now have in my hand, meets that criticism. After saying in the text that the prisoners committed by the House of Commons "are immediately released from their confinement on a prorogation," the note says:—

"But this law never extended to an adjournment, even when it was in the nature of a prorogation." [2]

[1] Digest., Lib. L. Tit. xvi. Cap. 85.

[2] Treatise on the Law, Privileges, Proceedings, and Usage of Parliament, and Stockdale *v.* Hansard, 9 Adolphus & Ellis, *ut supra*.

Take, for instance, the adjournments which habitually occur in the British Parliament at the Christmas holidays, at the Easter holidays, at the Whitsuntide holidays. You saw in the papers, only the other day, that Mr. Gladstone gave notice that the House of Commons would adjourn over several days on account of the Whitsuntide holidays; but nobody supposes that that is in the nature of a "prorogation," or that a committal by order of the House of Commons would expire on such an adjournment, as it would not expire on our adjournment for our Christmas holidays.

Therefore do the very precedents of the British Parliament answer completely the case put by the Senator from New York, who imagined a difficulty from occasional adjournments at the Christmas holidays. Sir, we are to look at this precisely as it is. The prorogation of the House of Commons is an adjournment without day, corresponding precisely to our adjournment without day. I believe in Massachusetts, down to this moment, when the Legislature has agreed upon the time of its adjournment, it gives notice to the Governor, who sends the Secretary of the Commonwealth to prorogue it, and the Legislature is declared to be prorogued, — thus following the language so familiar in England.

Then it is argued that this power to commit may be prolonged by a Committee to sit during the vacation. But how so? The Committee has no power to commit. The power to commit comes from the Senate. How does the sitting of the Committee in the vacation add to its powers? It has no such power while the Senate is in session. How can it have any such power when the Senate has closed its session? But the power to protract the imprisonment of a citizen must be kindred with that to imprison.

I dismiss the whole argument founded upon the prolongation of the Committee as entirely irrelevant. Prolong the Committee, if you please, till doomsday; you cannot by that in any way affect the liberty of the citizen. The citizen is imprisoned only by the order of the Senate, and the power to imprison or to detain expires with the session. Such, Sir, is the rule that we have borrowed from England. Nor am I alone in thus interpreting it. I cited, the other day, the authentic work of the late Judge Cushing on the Law and Practice of Legislative Assemblies. I will, with your permission, read again his statement, as follows: —

"According to the Parliamentary Law of England there is a difference between the Lords and Commons in this respect: the former being authorized, and the latter not, to imprison for a period beyond the session."

That is the testimony of Judge Cushing, who had devoted his life to the study of this subject. He then goes on: —

"In this country the power to imprison is either incidental to or expressly conferred upon all our legislative assemblies; and in some of the States it is also regulated by express constitutional provision."

Then he gives his conclusion: —

"Where it is not so regulated, it is understood that the imprisonment terminates with the session."[1]

Mark, if you please, "terminates with the session."

Here you have the authentic words of this special authority, interpreting the English Parliamentary Law,

[1] Law and Practice of Legislative Assemblies in the United States, (Boston, 1863,) § 677, p. 267.

and also declaring our law. Who is there that can go behind these words? What Senator will set up his research or his conclusion against that of this exemplar? Who is there here that will venture to claim for the Senate a prerogative which this American authority disclaims for legislative bodies in our country, unless expressly sanctioned by Constitutional Law?

I have shown that this power to commit beyond the session does not exist in the House of Commons, from which we derive such prerogatives or privileges as we have. But the stream cannot rise higher than the fountain-head. How, then, if the power does not exist in the House of Commons, can you find it here? You cannot trace the present assumption to any authentic, legitimate fountain. If you attempt it, permit me to say you will fail, and the assumption will appear without authority, and therefore a usurpation. I so characterize it, feeling that I cannot be called in question when I use this strong language. If you undertake to detain these prisoners beyond the expiration of this session, you become usurpers, the Senate of the United States usurps power that does not belong to it; and, Sir, this is more flagrant, when it is considered that it usurps this power in order to wield it against the liberty of fellow-citizens.

When I state this conclusion, I feel that I stand on supports that cannot be shaken. I stand on English authorities sustained by American authorities. You cannot find any exception. That in itself is an authority. If you could mention an exception, I should put it aside as an accident or an abuse, and not as an authority. The rule is fixed and positive; and I now have no hesitation in declaring that it will be the duty of the

judge, on a writ of *Habeas Corpus*, as soon as this Senate closes its session, to set these prisoners at liberty, unless the Senate has the good sense in advance to authorize their discharge. I do not doubt the power and the duty of the Court. I am sure that no judge worthy of a place on the bench will hesitate in this judgment. Should he, I would read to him the simple words of the Lord Chief-Justice of England on the very point: —

"If the House ordered his imprisonment but for a week, every court in Westminster Hall and every judge of all the courts would be bound to discharge him by *Habeas Corpus*."[1]

There is no way of answering those words. They are as commanding on this occasion as if they were in the very text of our Constitution. When I say this, I do not speak vaguely; for I am sure that every student of this subject will admit that a judgment like that which I have adduced on a question of Parliamentary Law, and in favor of the rights of the subject, is of an authority in our country equal to the Constitution itself.

This brings me, Sir, to an important point which I had hoped not to be called to discuss, but which the argument of the Senator from New York seems to press upon the consideration of the Senate and of the country; and therefore I shall open it to your attention, even if I do not discuss it. It is this: that, whatever may be the power even in England by Parliamentary Law, it by no means follows that the Senate of the United States has that power.

What is the Senate? A body created by a written

[1] Stockdale *v.* Hansard, *ut supra*.

Constitution, enjoying certain powers described and defined in the Constitution itself. The Constitution says nothing about contempt or punishment for contempt. In order to obtain this power you must go into inference and deduction; you must infer it or imply it. In the case of impeachments the Senate becomes a judicial body, and it is reasonable to infer that it may have the power to compel the attendance of witnesses,— in short, the powers of a court. The Senate also, by express terms of the Constitution, has the power to expel a member. There again is an inquiry in its nature judicial; and should the Senate on such occasion examine witnesses and proceed as a court, it may be inferred that it is so authorized by the Constitution. There is also a third power which the Senate possesses, judicial in character: it is to determine the election of its members. Beyond these every power that the Senate undertakes to exercise on this subject is derived by inference. It does not stand on any text of the Constitution. It is a mere implication, and, being adverse to the rights of the citizen, it must be construed strictly.

Now I am not ready to say, I do not say, that the Senate has not the power to institute a proceeding like that now in question. I am very clear that it has not the power by compulsory process to compel witnesses to testify in aid of legislation, as was once attempted in what was known familiarly as the Harper's Ferry Investigating Case. But I do not undertake to say that it may not institute a proceeding like that in which we are now engaged; yet I admit its legality with great hesitation and with sincere doubt. I doubt whether such an assumption can stand an argument in this Chamber; I doubt whether it can stand a discussion

before a court of justice. How do you arrive at such a power? The Senator from Wisconsin [Mr. CARPENTER] said, the other day, the Senate, according to the arguments of certain Senators, has not the power of a justice of the peace. The Senator never spoke truer words: the Senate has not the power of a justice of the peace. A justice of the peace is a court with the powers of a court. The Senate of the United States is not a court, except in the cases to which I have already referred. It is a serious question whether it is a court in the proceeding which it has now seen fit to institute. Were it a court, then the argument of the Senator from Wisconsin might be applicable, and it might then claim the privileges of a court. It might proceed, if you please, to fine as well as to commit. The Senate in its discretion forbears to fine; it contents itself with imprisonment. But if it can imprison, why not fine? Why is not the whole catalogue of punishment open to its grasp?

I have reminded you, Sir, that our powers, whatever they may be, are under a written Constitution, and in this important respect clearly distinguishable from the powers of the House of Commons, which are the growth of tradition and immemorial usage. I am not the first person to take this ground. I find it judicially asserted in most authentic judgments, to which I beg to call the attention of the Senate.

I have in my hands the fourth volume of Moore's Privy Council Cases, cases argued in the Privy Council of England, many of them being cases that have come up from the Colonies,—and here is one, being an appeal from the Supreme Court of the island of Newfoundland. I will read the marginal note:—

"The House of Assembly of the island of Newfoundland does not possess, as a legal incident, the power of arrest, with a view of adjudication on a contempt committed out of the House, — but only such powers as are reasonably necessary for the proper exercise of its functions and duties as a local Legislature.

"*Semble.* — The House of Commons possess this power only by virtue of ancient usage and prescription, the *Lex et Consuetudo Parliamenti.*

"*Semble.* — The Crown, by its prerogative, can create a Legislative Assembly in a settled colony, subordinate to Parliament, but with supreme power within the limits of the colony for the government of its inhabitants; but,

"*Quære.* — Whether it can bestow upon it an authority, namely, that of committing for contempt, not incidental to it by law?"[1]

I will not take time in reading extracts from the opinion of the Court, which goes on the ground that the Legislature of the Colony is acting under a commission from the Crown in the nature of a Constitution, being a written text, and that it could not therefore claim for itself those vast, immense, unknown privileges and prerogatives which by long usage are recognized as belonging to the House of Commons.

But the question was presented at a later day in another case before the Privy Council, which came from the Supreme Court of Van Diemen's Land. I cite now Moore's Privy Council Cases, volume eleven. This case was decided in 1858. It is therefore a recent authority. The marginal note is as follows: —

"The *Lex et Consuetudo Parliamenti* applies exclusively to the House of Lords and House of Commons in England, and

[1] Kielley *v.* Carson et als.: 4 Moore, Privy Council Cases, 63.

is not conferred upon a Supreme Legislative Assembly of a colony or settlement by the introduction of the Common Law of England into the colony.

"No distinction in this respect exists between Colonial Legislative Councils and Assemblies whose power is derived by grant from the Crown or created under the authority of an Act of the Imperial Parliament." [1]

You will see, Sir, that by this decision the powers of a Legislative Assembly created by a Charter are limited to the grants of the Charter, and that the mere creation of the legislative body does not carry with it the Law and Custom of Parliament. In the course of his opinion Lord Chief-Baron Pollock uses the following language. Alluding to the decision of the Privy Council in the Newfoundland case, he says:—

"They held that the power of the House of Commons in England was part of the *Lex et Consuetudo Parliamenti;* and the existence of that power in the Commons of Great Britain did not warrant the ascribing it to every Supreme Legislative Council or Assembly in the Colonies. We think we are bound by the decision of the case of Kielley *v.* Carson. . . . . If the Legislative Council of Van Diemen's Land cannot claim the power they have exercised on the occasion before us as inherently belonging to the supreme legislative authority which they undoubtedly possess, they cannot claim it under the statute as part of the Common Law of England (including the *Lex et Consuetudo Parliamenti*) transferred to the Colony by the 9th Geo. IV. c. 83, sect. 24. The *Lex et Consuetudo Parliamenti* apply exclusively to the Lords and Commons of this country, and do not apply to the Supreme Legislature of a Colony by the introduction of the Common Law there." [2]

[1] Fenton et al. *v.* Hampton : 11 Moore, Privy Council Cases, 347.
[2] Ibid., 396-97.

Now the question is directly presented by these decisions, whether under the written text of the Constitution of the United States you can ingraft upon our institutions the Law and Custom of Parliament. So far as these cases are applicable, they decide in the negative; but I will not press them to that extent. I adduce them for a more moderate purpose, — simply to put the Senate on its guard against any assumption of power in this matter. I do not undertake to say to what extent the Senate may go; but with these authorities I warn it against proceeding on any doubtful practices. If there be any doubt, then do these authorities cry out to you to stop.

I have said, Sir, that our powers here are limited by the Constitution: I may add, also, and the Law in pursuance of the Constitution. And now I ask you to show me any text of the Constitution, and to show me any text of Law, which authorizes the detention of these witnesses by the Senate. The Senate, be it understood, is not a court. Certainly, for this purpose and on this occasion, it is not a court. Show me the law. Does it exist? If it exists, some learned Senator can point it out. But while Senators fail to point out any law sanctioning such a procedure, I point out an immortal text in the Constitution of the United States, borrowed from Magna Charta, which it is difficult to disobey: —

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, . . . nor be deprived of life, liberty, or property, without due process of law."

"Without due process of law." What is the mean-

ing of that language? Judge Story[1] tells us, as follows: —

"Lord Coke[2] says that these latter words, *per legem terræ*, (by the law of the land,) mean *by due process of law:* that is, without due presentment or indictment, and being brought in to answer thereto by due process of the Common Law. So that this clause in effect affirms the right of trial according to the process and proceedings of the Common Law."[3]

There, Sir, is a living text of the Constitution of the United States, binding upon this Senate. Where do you find any other text authorizing you to institute this proceeding? or if you institute the proceeding, must it not come within the limitations of this prohibition?

But I may be reminded that there are precedents. How many precedents are there for such a proceeding? We are familiar with all of them. The latest, the most authentic, is that of Thaddeus Hyatt, proceeded against because he refused to testify before the Harper's Ferry Investigating Committee. Is that a precedent which you are disposed to follow? I am sure you would not, if you read the weighty argument in that proceeding made by the late John A. Andrew, and Samuel E. Sewall, of Massachusetts, the accomplished jurist, who still survives to us. Go still further back and you have the case, entirely like that before us, of Nugent, — who was not pursued, I was going to say, as ferociously as the present witnesses have been pursued, for his custody was simply that of the house of the Sergeant-at-Arms, and

[1] Quoting Magna Charta, — "Nec super eum [liberum hominem] ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terræ."

[2] 2 Inst., 50 - 51.

[3] Commentaries on the Constitution, § 1783, Vol. III. p. 661.

it was recognized at that time that even that mild custody would expire with the session of the Senate. You have also the earlier precedent of 1800 in the case of Duane, which, I think, Senators would hesitate now to vindicate. Let them look at it and see whether they would sanction a similar proceeding at this day, — whether such a tyranny could go on without shocking the public conscience, and being recognized universally as an assault upon the liberty of the press.[1]

Those are the cases furnished by the history of the Senate. Lord Denman, in the case of *Stockdale* v. *Hansard*, the famous case to which I have referred, gives an answer to them as follows: I quote from the ninth volume of Adolphus and Ellis's Reports, page 155: —

"The practice of a ruling power in the State is but a feeble proof of its legality. I know not how long the practice of raising ship-money had prevailed before the right was denied by Hampden; general warrants had been issued and enforced for centuries before they were questioned in actions by Wilkes and his associates, who, by bringing them to the test of law, procured their condemnation and abandonment. I apprehend that acquiescence on this subject proves, in the first place, too much; for the admitted and grossest abuses of privilege have never been questioned by suits in Westminster Hall."

This proceeding has analogy with one well known in English history, that of the Star-Chamber Court, which you will find described by Mr. Hallam in his "Constitutional History of England," in chapter eight, and I refer

[1] For the proceedings in this case, see Annals of Congress, 6th Cong. 1st Sess., Senate, at the pages referred to in the Index, under the title *Aurora*. On the cases of Hyatt and Nugent, see, *ante*, pp. 132, 133, and the references there named.

to it merely for the sake of one single sentence which I cite from this great author: —

"But precedents of usurped power cannot establish a *legal authority* in defiance of the acknowledged law."[1]

But where is the *legal authority* for the imprisonment of these witnesses? Only in mere inference, mere deduction, — the merest inference; but surely you will not take away the liberty of the citizen on any such shadowy, evanescent apology, which is no apology, but a sham, and nothing else. I have already called attention to the argument of Governor Andrew and Hon. S. E. Sewall, which will be found in the Congressional Globe under date of March 9, 1860. Did time permit, I should quote from it at length; but I commend it to the Senate and all inquirers.

As an illustration of the doubts which environ this question, I call attention to the case of *Sanborn* v. *Carleton*,[2] where Chief-Justice Shaw, of Massachusetts, gave the opinion of the Court. The Senator from Wisconsin [Mr. CARPENTER] will not question his character. After stating that "it is admitted in the arguments that there is no express provision in the Constitution of the United States giving this authority in terms," — that is, the alleged authority of the Senate, — he proceeds to say that there are questions on this subject "manifestly requiring great deliberation and research." And yet Senators treat them as settled. The Chief-Justice then proceeds to announce that a warrant issued by order of the Senate of the United States for the arrest of a witness for contempt in refusing to appear before a Committee of

[1] Vol. I. p. 448, 6th edition, London, 1850.
[2] 15 Gray's Reports, 399.

the Senate, and addressed only to the Sergeant-at-Arms of the Senate, cannot be served in Massachusetts by a deputy. But this very question arises in the present proceedings. The managing editor of the "Tribune," Mr. Whitelaw Reid, was summoned by a deputy, and not by the Sergeant-at-Arms. Gracefully yielding to the illegal summons, he appeared before the Committee; but the question of power still remains; and this very question adds to the embarrassments of the subject.

The extent of the abuse now in question will be seen, if I call the attention of the Senate to the last Report of the Committee of Investigation. By that Report it appears that they undertook to examine two agents of the Telegraph Company, who, finally, at the last moment, when asked to make a definitive statement with regard to the copy of the Treaty lodged with them for communication to New York, declined to answer. And you have now in this usurpation of the Senate an attempt to break into the telegraph-offices of the United States. You raise, for the first time in this Chamber, one of the great questions of the times. Can you do any such thing?

Mr. Nye [of Nevada]. I should like to ask the Senator from Massachusetts if the courts have not broken into the telegraph-offices?

Mr. Sumner. I am not speaking about the courts. I am speaking about the Senate of the United States.

Mr. Nye. I ask the Senator if the Senate of the United States, in this investigation, as long as it exists, has not all the authority of a court?

Mr. Sumner. I have already stated that it has not, — that it has not the authority of a justice of the peace.

The Senate proposes to break into the telegraph-offices of the United States. In the guise of privilege, it enters those penetralia and insists that the secrets shall be disclosed. What is the difference between a communication by telegraph and a communication by letter? Is there not a growing substitution of the telegram for the letter? Has not this taken place to an immense extent in England? Is it not now taking place to an immense extent in our own country?

Now, Sir, mark the limitation of my language. I do not mean to say that the telegram is entitled to all the sacredness of the letter; but I do insist that the Senate, before it undertakes to break into the telegraph-offices of the United States, shall calmly consider the question, and see to what end the present disposition will carry them. Senators who have not entirely forgotten the recent history of England know that the powerful Cabinet of Sir Robert Peel for a time trembled under the imputation that one of its ablest members, Sir James Graham, who, Mr. Webster told me, in his judgment, was the best speaker in Parliament, had authorized the opening of the letters of Mazzini at the Post-Office. The subject was brought before Parliament night after night. You shall see how it was treated. The Liberal member from Finsbury, Mr. Duncombe, in presenting it first, — I read from Hansard, — after inveighing against the opening of letters, said: —

"That was a system which the people of this country would not bear, which they ought not to bear; and he hoped, after the exposure which had taken place, that some means would be adopted for counteracting this insidious conduct of her Majesty's ministers. It was disgraceful to a free country that such a system should be tolerated. It might do in Rus-

sia, ay, or even in France, or it might do in the Austrian dominions, it might do in Sardinia; but it did not suit the free air of this free country."[1]

Lord Denman, always on the side of Freedom, at the time Chief-Justice of England, in the House of Lords said:—

"Could anything be more revolting to the feeling than that any man might have all his letters opened in consequence of some information respecting him having been given to the Secretary of State, and that the contents of those letters, which he might have never received, might be made use of for the purpose of proceeding against him in a court of justice? The letters of a man might be opened, and he might not have the slightest intimation that he was betrayed. Now is such a state of things to be tolerated in a civilized country? He would say, without the slightest hesitation, that it ought not to be borne with for a single hour."[2]

Lord Brougham observed that—

"He had not expressed any approval of the system; on the contrary, he distinctly stated that *nothing but absolute necessity for the safety of the State would justify it.*"[3]

I might occupy your time till evening in adducing the strong language of reprobation which was employed at that time. I will conclude with an extract from a speech of that remarkable Irish orator, Mr. Sheil, as follows:—

"That which is deemed utterly scandalous in private life ought not to be tolerated in any department of the State; and

[1] Speech, June 14, 1844: Hansard's Parliamentary Debates, 3d Series, Vol. LXXV. col. 898-99.

[2] Speech, June 17, 1844: Ibid., col. 980-81.

[3] Ibid., col. 981.

from the Statute-Book, which it dishonors, this ignominious prerogative ought to be effaced forever." [1]

That brings me to the point, Sir, that there was an old statute of Queen Anne which authorized the opening of letters at the Post-Office under the order of a Secretary of State; [2] but, notwithstanding that old statute, the system was reprobated. And now it is proposed, in the maintenance of the privileges of the Senate, not in the administration of justice before any court, but in the enforcement of the privileges of the Senate, to penetrate the secrets of the Telegraph. I will not undertake to say that you cannot do it. I content myself now with calling attention to the magnitude of the question, and adducing it as a new reason why you should hesitate in this whole business. You see to what it conducts. You see in what direction you are travelling. You see how, if you persevere, you will shock the conscience and the sensibilities of the American people.

I do not believe that the American people will willingly see the Telegraph rifled, any more than they will see the Post-Office rifled, in order to maintain medieval, antediluvian privileges of the Senate, — especially when those privileges cannot be deduced from any text of the Constitution, but are simply inferred from the ancient, primeval Law and Usage of Parliament. Not only the orators, but the wits of the time, denounced the attempt in England to open letters. Punch caricatured the Secretary who attempted it as "Paul Pry at the Post-Office." [3] But is not the Senate in the Report of our Committee "Paul Pry at the Telegraph-Office?"

[1] Speech, June 24, 1844: Hansard, 3d Series, Vol. LXXV. col. 1292.
[2] 9 Ann., cap. 10, § 40.
[3] Vol. VII. p. 7, cartoon.

I make these remarks with a view of opening to the Senate the importance of the question before them, that they may once more hesitate and withdraw to the safe ground of the Constitution and the Law; for there is nothing in the Constitution or in the Law that can sanction the continued imprisonment of these witnesses. Even suppose your proceedings have been from the beginning in all respects just and proper, even suppose that you can vindicate them, in regard to which I beg leave to express a sincere doubt, you cannot vindicate the attempt to continue these witnesses in custody when you go away. Then they are as free as you. If they are detained in prison, it is only because you yourselves are imprisoned here in the discharge of your responsible duties. When your imprisonment comes to an end, theirs comes to an end also. You cannot go home and leave them captives. The Law will step in and take them from your clutch. Better, then, in advance, by a proper and generous resolution, to order their discharge, so that the Law will not be compelled to do what you fail to do.

The resolution was agreed to, — Yeas 23, Nays 13.

THE HAYTIAN MEDAL.

Response to the Letter of Presentation, July 13, 1871.

The Medal was placed in Mr. Sumner's hands July 13, 1871, by General Preston, the Haytian Minister, together with the following letter, signed by the President and several distinguished citizens of the Republic: —

"Liberty, Equality, Fraternity!
Republic of Hayti.

"*To the Hon. Charles Sumner, Senator of Massachusetts:* —

"Honorable Senator, — The independence of Hayti has been our object. To affirm the aptitude of the black race for civilization and self-government, by your eloquence and your high morality you have made free four millions of blacks in the United States. In defending our independence on two solemn occasions, you have protected and defended something more august even than the liberty of the blacks in America. It is the dignity of a black people seeking to place itself, by its own efforts, at the banquet of the civilized world. Hayti thanks you. She will be able to justify your esteem, and to maintain herself at the height of her mission, marching in the path of progress. In the name of the Haytian people, we pray you to accept, as a feeble testimony of its gratitude, this medal, which will perpetuate in ages to come the recollection of the services which you have rendered to us as citizens of the world, and to black Humanity."

Mr. Sumner at the time expressed his gratitude, and said that he would communicate with the signers in writing. That same evening he sent an informal note to the Minister, saying that he feared he should feel constrained to decline the present, and subsequently replied to the letter of presentation as follows: —

WASHINGTON, July 13, 1871.

GENTLEMEN, — I have received to-day, by the hands of your Minister at Washington, the beautiful medal which you have done me the honor of presenting to me in the name of the Haytian people, together with the accompanying communication bearing so many distinguished names, among which I recognize that of the estimable President of the Republic. Allow me to say, most sincerely, that I do not deserve this token, nor the flattering terms of your communication. I am only one of many who have labored for the enfranchisement of the African race, and who yet stand ready to serve at all times the sacred cause; nor have I done anything except in the simple discharge of duty. I could not have done otherwise without the rebuke of my conscience.

In this service I have acted always under promptings which with me were irresistible. Like you, I hail the assured independence of Hayti as important in illustrating the capacity of the African race for self-government; and I rejoice to know that distinguished Haytians recognize the necessity of clinging to national life, not only for the sake of their own Republic, but as an example for the benefit of that vast race over which the white man has so long tyrannized. Your successful independence will be the triumph of the black man everywhere, in all the isles of the sea, and in all the unknown expanse of the African continent, marking a great epoch of civilization. In cultivating a sentiment of nationality, you will naturally insist upon that equality among nations which is your right. Self-government implies self-respect. In the presence of International Law all

nations are equal. As well deprive a citizen of equality before the law as deprive a nation. You will also insist upon that Christian rule, as applicable to nations as to individuals, of doing unto others as you would have them do unto you. Following it always in your own conduct, and expecting others to follow it towards you, will you ever forget that sentiment of Humanity by which all men are one, with common title, with common right?

I rejoice, again, in the assurance you give that Hayti is prepared to advance in the path of Progress. Here I offer my best wishes, with the ardent aspiration that the two good angels, Education and Peace, may be her guides and support in this happy path. With education for the people, and with peace, foreign and domestic, especially everywhere on the island, the independence of Hayti will be placed beyond the assaults of force or the intrigues of designing men, besides being an encouragement to the African race everywhere.

I trust that you will receive with indulgence these frank words in response to the communication with which you have honored me: they will show at least my constant sympathy with your cause.

And now, Gentlemen, I throw myself again on your indulgence, while expressing the hope that you will not suspect me of insensibility to your generous present, if I add, that, considering the text of the Constitution of the United States and the service you have intended to commemorate, I deem it my duty to return the beautiful medal into your hands. To this I am constrained by the spirit, if not by the letter of the Constitution, which forbids any person in my situation from accepting any present of any kind whatever from a foreign

State. Though this present is not strictly from the State of Hayti, yet, when I observe, that, according to the flattering inscription, it is from the Haytian people, and that the communication accompanying it is signed by the President and eminent magistrates of Hayti, and still further that it is in recognition of services rendered by me as a Senator of the United States, I feel that I cannot receive it without acting in some measure contrary to the intention of the Constitution which I am bound to support. In arriving at this conclusion I have been governed by that same sense of duty which on the occasions to which you refer made me your advocate, and which with me is a supreme power. While thus resigning this most interesting token, I beg you to believe me none the less grateful for the signal honor you have done me.

Accept for yourselves and for your country all good wishes, and allow me to subscribe myself, Gentlemen,

Your devoted friend,

CHARLES SUMNER.

The medal was subsequently presented by the Haytian Government to the Commonwealth of Massachusetts, and deposited in the State Library.

EQUALITY OF RIGHTS IN PUBLIC SCHOOLS.

LETTER TO GEORGE W. WALKER, PRESIDENT OF THE BOARD OF SCHOOL DIRECTORS OF JEFFERSON, TEXAS, JULY 28, 1871.

MR. WALKER having written to Mr. Sumner, asking his views in regard to the management of public schools, &c., the latter replied as follows: —

WASHINGTON, 28th July, 1871.

DEAR SIR, — As in Europe there will be no durable tranquillity until Republican Government prevails, so among us there will be a similar failure until Equality before the Law is completely established, — at the ballot-box, — in the court-house, — in the public school, — in the public hotel, — and in the public conveyance, whether on land or water. At least, so it seems to me.

I doubt if I can add materially to the argument which you have already received, but, with your permission, I ask attention to the point that *equality* is not found in *equivalents*. You cannot give the colored child any equivalent for equality.

Accept my best wishes, and believe me, dear Sir,

Faithfully yours,

CHARLES SUMNER.

PEACE AND THE REPUBLIC FOR FRANCE.

REMARKS IN MUSIC HALL, BOSTON, INTRODUCING M. ATHANASE COQUEREL, OF PARIS, OCTOBER 9, 1871.

AT the first of two lectures entitled "The Two Sieges of Paris," by M. Coquerel, Mr. Sumner, being called to preside, said: —

I CANNOT forget, Ladies and Gentlemen, that in other years the enjoyments of Paris were heightened for me, as I listened, more than once, to an eloquent French preacher, on whose words multitudes hung with rapture while he unfolded Christian truth. The scene, though distant in time, rises before me, and I enjoy again that voice of melody, and that rare union of elegance with earnestness, of amenity with strength, which were so captivating; nor do I know that I have since witnessed in any pulpit or assembly, or on any platform, more magnetic power visibly appearing as the orator drew to himself the listening throng, and all commingled into one.

It is now my grateful duty to welcome the son of that orator, who, with his father's genius, visits us on an errand of charity.

He will speak to you of Paris the Beautiful, and of the double tragedy only recently enacted, where the bursting shells of a foreign foe were followed by the

more direful explosions of domestic feud. The story is sad, among the saddest in history; but it is a wonderful chapter, with most instructive lesson.

Knowing our honored guest by his life, I am sure that to him war is detestable, while Republican Government is his aspiration for France. Were all Frenchmen of his mind, the deadly war-fever would disappear, and the Republic would be established on a foundation not to be shaken; and then would France rise to glories which she has never before reached. Plainly, at this epoch of civilization, there are two Great Commandments which this powerful nation cannot disobey with impunity. The first is Peace; and the second, which is like unto the first, is the Republic. But the Republic is Peace,—most unlike the Empire, which was always war in disguise.

It is sometimes said, somewhat lightly, that France is a Republic without Republicans. A great mistake. Was not Lafayette a Republican? And I now have the honor of presenting to you another.

THE GREAT FIRE AT CHICAGO, AND OUR DUTY.

SPEECH AT FANEUIL HALL, AT A MEETING FOR THE RELIEF OF SUFFERERS AT CHICAGO, OCTOBER 10, 1871.

THE meeting was at noon, and the chair taken by the Mayor, Hon. William Gaston. Hon. Alexander H. Rice introduced resolutions, and spoke, when Mr. Sumner followed: —

MR. MAYOR AND FELLOW-CITIZENS: —

I COME forward to second the resolutions moved by my friend Mr. Rice, and to express my hope that they may be adopted unanimously, and then acted upon vigorously.

Fellow-Citizens, I had expected to be elsewhere today; but, thinking of the distress of distant friends and countrymen, my heart was too full for anything else, and, putting aside other things, I have come to Faneuil Hall, as a simple volunteer, to help swell this movement of sympathy and beneficence.

This is a meeting for action; but are we not told that eloquence is *action, action, action?* And most true is it now. Help for the suffering is the highest eloquence. The best speech is a subscription. And he is the orator whose charity is largest.

"Thrice he gives who quickly gives." This is a familiar saying from the olden time. Never was it more

applicable than now. Destruction has been swift; let your gifts be swift also. If the Angel Charity is not as quick of wing as the Fire-Fiend, yet it is more mighty and far-reaching. Against the Fire-Fiend I put the Angel Charity.

According to another saying handed down by ancient philosophy, that is the best government where a wrong to a single individual is resented as an injury to all. This sentiment is worthy of careful meditation. It implies the solidarity of the community, and the duty of coöperation. There is no wrong now, but an immense calamity, in which individuals suffer. Be it our duty to treat this calamity of individuals as the calamity of all.

Who does not know Chicago? Most have visited it, and seen it with the eye; but all know its pivotal position, making a great centre, and also its immense growth and development. In a few years, beginning as late as 1833, it has become a great city; and now it is called to endure one of those visitations which in times past have descended upon great cities. Much as it suffers, it is not alone. The catalogue discloses companions in the past.

The fire of London, in September, 1666, raged from Sunday to Thursday, with the wind blowing a gale, reducing two-thirds of the city to ashes. Thirteen thousand two hundred houses were consumed, and eighty-nine churches, including St. Paul's, covering three hundred and seventy-three acres within and sixty-three without the walls. The value of buildings and property burned was estimated at between ten and twelve millions sterling, which, making allowance for difference of values, now would be more than one hundred million dollars. I doubt if the population of London then was larger than

that of Chicago. And yet an English historian, recounting this event, says, "Though severe at the time, this visitation contributed materially to the improvement of the city." [1]

Ancient Rome had her terrible conflagration, hardly less sweeping, when populous quarters were devoured by the irresistible flame; and history records that out of this destruction sprang a new life.

Is there not in these examples a lesson of encouragement for Chicago sitting now in ashes? A great fire in other days was worse than a great fire now; for then it was borne in solitude by the place where it occurred; now the whole country rushes forward to bear it, making common cause with the sufferers. I cannot doubt that out of this great calamity, which we justly deplore, will spring improvement. Everything will be bettered. The city thus far has been a growth; it will become at once a creation. But future magnificence, filling the imagination, will not feed the hungry and clothe the naked, nor will it provide homes for the destitute. The future cannot take care of the present. This is our duty, and it is all expressed in Charity.

Other speakers followed. The resolutions were adopted, and a subscription was commenced at once.

[1] Encyclopædia Britannica, (8th edition,) arts. BRITAIN and LONDON: Vols. V. pp. 424–25; XIII. 659.

RIGHTS AND DUTIES OF OUR COLORED FELLOW-CITIZENS.

LETTER TO THE NATIONAL CONVENTION OF COLORED CITIZENS AT COLUMBIA, SOUTH CAROLINA, OCTOBER 12, 1871.

THIS letter was read in the Convention October 24th, the sixth day of its sitting, and received a vote of thanks.

BOSTON, October 12, 1871.

DEAR SIR, — I am glad that our colored fellow-citizens are to have a Convention of their own. So long as they are excluded from rights or suffer in any way on account of color, they will naturally meet together in order to find a proper remedy; and since you kindly invite me to communicate with the Convention, I make bold to offer a few brief suggestions.

In the first place, you must at all times insist upon your rights; and here I mean not only those already accorded, but others still denied, all of which are contained in Equality before the Law. Wherever the law supplies a rule, there you must insist on Equal Rights. How much remains to be obtained you know too well in the experience of life.

Can a respectable colored citizen travel on steamboats or railways, or public conveyances generally, without

insult on account of color? Let Governor Dunn of Louisiana describe his journey from New Orleans to Washington. Shut out from proper accommodation in the cars, the doors of the Senate Chamber opened to him, and there he found that equality which a railroad conductor had denied. Let our excellent friend, Frederick Douglass, relate his melancholy experience, when, on board the mail-boat of the Potomac and within sight of the Executive Mansion, he was thrust back from the supper-table, where his brother Commissioners were already seated. You know the outrage.

I might ask the same question with regard to hotels, and even the common schools. A hotel is a legal institution, and so is a common school, and as such each must be for the equal benefit of all. Nor can there be any exclusion from either on account of color. It is not enough to provide separate accommodations for colored citizens, even if in all respects as good as those of other persons. Equality is not found in any pretended equivalent, but only in equality; in other words, there must be no discrimination on account of color.

The discrimination is an insult, a hindrance, a bar, which not only destroys comfort and prevents equality, but weakens all other rights. The right to vote will have no security until your equal rights in the public conveyances, hotels, and common schools are at last established; but here you must insist for yourselves by speech, by petition, and by vote. Help yourselves, and others will help also.

The Civil Rights Law needs a supplement to cover these cases. This defect has been apparent from the beginning, and for a long time I have striven to remove it. A bill for this purpose, introduced by me, is now

pending in the Senate. Will not colored fellow-citizens see that those in power no longer postpone this essential safeguard? Surely here is an object worthy of effort. Nor has the Republican party done its work until this is accomplished.

Is it not better to establish all our own people in the enjoyment of equal rights before we seek to bring others within the sphere of our institutions, to be treated as Frederick Douglass was on his way to the President from San Domingo? It is easy to see that a small part of the means, the energy, and the determined will spent in the expedition to San Domingo, and in the prolonged war-dance about that island, with menace to the Black Republic of Hayti, would have secured all our colored fellow-citizens in the enjoyment of equal rights. Of this there can be no doubt.

Among cardinal objects is Education, which must be insisted on; here again must be equality, side by side with the alphabet. It is vain to teach equality, if you do not practise it. It is vain to recite the great words of the Declaration of Independence, if you do not make them a living reality. What is a lesson without example?

As all are equal at the ballot-box, so must all be equal at the common school. Equality in the common school is the preparation for equality at the ballot-box. Therefore do I put this among the essentials of education.

In asserting your rights, you will not fail to insist upon justice to all, under which is necessarily included purity in the Government. Thieves and money-changers, whether Democrats or Republicans, must be driven out of our Temple. Let Tammany Hall and Republican

self-seekers be overthrown. There should be no place for either. Thank God, good men are coming to the rescue. Let them, while uniting against corruption, insist upon Equal Rights for All, — also the suppression of lawless violence, whether in the Ku-Klux-Klan outraging the South, or illicit undertakings outraging the Black Republic of Hayti.

To these inestimable objects add Specie Payments, and you will have a platform which ought to be accepted by the American people. Will not our colored fellow-citizens begin this good work? Let them at the same time save themselves and save the country.

These are only hints, which I submit to the Convention, hoping that its proceedings will tend especially to the good of the colored race.

Accept my thanks and best wishes, and believe me faithfully yours,

CHARLES SUMNER.

HON. H. M. TURNER.

ONE TERM FOR PRESIDENT.

RESOLUTION AND REMARKS IN THE SENATE,
DECEMBER 21, 1871.

MR. PRESIDENT, — In pursuance of notice already given, I ask leave to introduce a Joint Resolution proposing an Amendment of the Constitution confining the President to one term. In introducing this Amendment I content myself with a brief remark.

This is the era of Civil Service Reform, and the President of the United States, in formal Message, has already called our attention to the important subject, and made recommendations with regard to it.[1] It may be remembered that I hailed that Message at once, as it was read from the desk. I forbore then to observe that I missed one recommendation, a very important recommendation, without which all the other recommendations, I fear, may be futile. I missed a recommendation in conformity with the best precedents of our history, and with the opinions of illustrious men, that the Constitution be amended so as to confine the President to one term.

Sir, that is the initial point of Civil Service Reform; that is the first stage in the great reform. The scheme

[1] Annual Message, 41st Cong. 3d Sess., December 5, 1870.

of the President is the play of "Hamlet" without Hamlet. I propose by the Amendment that I offer to see that Hamlet is brought into the play. I send the resolution to the Chair.

MR. BAYARD. I should like to have that paper read for the information of the Senate.

THE PRESIDENT *pro tempore*. The Joint Resolution will be read at length.

The Chief Clerk read as follows: —

Joint Resolution proposing an Amendment of the Constitution, confining the President to One Term.

Whereas for many years there has been an increasing conviction among the people, without distinction of party, that one wielding the vast patronage of the President should not be a candidate for reëlection, and this conviction has found expression in the solemn warnings of illustrious citizens, and in repeated propositions for an Amendment of the Constitution confining the President to one term:

Whereas Andrew Jackson was so fully impressed by the peril to Republican Institutions from the temptations acting on a President, who, wielding the vast patronage of his office, is a candidate for reëlection, that, in his first Annual Message, he called attention to it;[1] that, in his second Annual Message, after setting forth the design of the Constitution "to secure the independence of each department of the Government, and promote the healthful and equitable administration of all the trusts which it has created," he did not hesitate to

[1] Annual Message, 21st Cong. 1st Sess., December 8, 1829.

say, "The agent most likely to contravene this design of the Constitution is the Chief Magistrate," and then proceeded to declare, "In order particularly that his appointment may as far as possible be placed beyond the reach of any improper influences; in order that he may approach the solemn responsibilities of the highest office in the gift of a free people uncommitted to any other course than the strict line of constitutional duty; and that the securities for this independence may be rendered as strong as the nature of power and the weakness of its possessor will admit, I cannot too earnestly invite your attention to the propriety of promoting such an Amendment of the Constitution as will render him ineligible after one term of service";[1] and then, again, in his third Annual Message, the same President renewed this patriotic appeal:[2]

Whereas William Henry Harrison, following in the footsteps of Andrew Jackson, felt it a primary duty, in accepting his nomination as President, to assert the One-Term principle in these explicit words: "Among the principles proper to be adopted by any Executive sincerely desirous to restore the Administration to its original simplicity and purity, I deem the following to be of prominent importance: first, to confine his service to a single term";[3] and then, in public speech during the canvass which ended in his election, declared, "If the privilege of being President of the United States had been limited to one term, the incumbent would devote all his time to the public interest, and there would be no cause to misrule the country"; and he con-

[1] Annual Message, 21st Cong. 2d Sess., December 7, 1830.
[2] Annual Message, 22d Cong. 1st Sess., December 6, 1831.
[3] Letter to Harmer Denny, December 2, 1838, cited in Letter of Acceptance, December 19, 1839: Niles's Register, Vol. LV. p. 361; LVII. 379.

cluded by pledging himself "before Heaven and Earth, if elected President of these United States, to lay down, at the end of the term, faithfully, that high trust at the feet of the people":[1]

Whereas Henry Clay, though differing much from Andrew Jackson, united with him on the One-Term principle, and publicly enforced it in a speech, June 27, 1840, where, after asking for "a provision to render a person ineligible to the office of President of the United States after a service of one term," he explained the necessity of the Amendment by saying, "Much observation and deliberate reflection have satisfied me that too much of the time, the thoughts, and the exertions of the incumbent are occupied during his first term in securing his reëlection: the public business consequently suffers";[2] and then, again, in a letter dated September 13, 1842, while setting forth what he calls "principal objects engaging the common desire and the common exertion of the Whig party," the same statesman specifies "an Amendment of the Constitution, limiting the incumbent of the Presidential office to a single term":[3]

Whereas the Whig party, in its National Convention at Baltimore, May 1, 1844, nominated Henry Clay as President and Theodore Frelinghuysen as Vice-President, with a platform where "a single term for the Presidency" is declared to be among "the great principles of the Whig party, principles inseparable from the public honor and prosperity, to be maintained and advanced

[1] Speech at the Dayton Convention, September 10, 1840: Niles's Register, Vol. LIX. p. 70.

[2] Speech at Taylorsville, Hanover County, Virginia, June 27, 1840: Works, Vol. VI. p. 421.

[3] Letter to the Young Men of Philadelphia: National Intelligencer, September 26, 1842.

by the election of these candidates";[1] which declaration was echoed at the great National Ratification Convention the next day, addressed by Daniel Webster, where it was resolved that "the limitation of a President to a single term" was among the objects "for which the Whig party will unceasingly strive until their efforts are crowned with a signal and triumphant success":[2]

Whereas, in the same spirit and in harmony with these authorities, another statesman, Benjamin F. Wade, at the close of his long service in the Senate, most earnestly urged an Amendment of the Constitution confining the President to one term, and in his speech on that occasion, February 20, 1866, said, "The offering of this resolution is no new impulse of mine, for I have been an advocate of the principle contained in it for many years, and I have derived the strong impressions which I entertain on the subject from a very careful observation of the workings of our Government during the period that I have been an observer of them; I believe it has been very rare that we have been able to elect a President of the United States who has not been tempted to use the vast powers intrusted to him according to his own opinions to advance his reëlection"; and then, after exposing at length the necessity of this Amendment, the veteran Senator further declared, "There are defects in the Constitution, and this is among the most glaring; all men have seen it; and now let us have the nerve, let us have the resolution to come up and apply the remedy":[3]

[1] National Intelligencer, May 2, and Boston Daily Advertiser, May 6, 1844.

[2] National Intelligencer, May 4, 1844.

[3] Congressional Globe, 39th Cong. 1st Sess., p. 932.

Whereas these testimonies, revealing intense and wide-spread convictions of the American people, are reinforced by the friendly observations of De Tocqueville, the remarkable Frenchman to whom our country is under such great and lasting obligations, in his famous work on "Democracy in America," where he says, in words of singular clearness and force, "Intrigue and corruption are vices natural to elective Governments; but when the chief of the State can be reëlected, these vices extend themselves indefinitely, and compromise the very existence of the country: when a simple candidate seeks success by intrigue, his manœuvres can operate only over a circumscribed space; when, on the contrary, the chief of the State himself enters the lists, he borrows for his own use the force of the Government: in the first case, it is a man, with his feeble means; in the second, it is the State itself, with its immense resources, that intrigues and corrupts":[1] and then, again, the same great writer, who had studied our country so closely, testifies: "It is impossible to consider the ordinary course of affairs in the United States without perceiving that the desire to be reëlected dominates the thoughts of the President; that the whole policy of his Administration tends toward this point; that his least movements are made subservient to this object; that, especially as the moment of crisis approaches, individual interest substitutes itself in his mind for the general interest":[2]

Whereas all these concurring voices, where patriotism, experience, and reason bear testimony, have addi-

[1] De la Démocratie en Amérique, Tom. I. Ch. VIII., *De la Réélection du Président.*

[2] Ibid.

tional value at a moment when the country is looking anxiously to a reform of the civil service, for the plain reason that the peril from the Chief Magistrate, so long as he is exposed to temptation, surpasses that from any other quarter, and thus the first stage in this much-desired reform is the One-Term principle, to the end that the President, who exercises the appointing power, reaching into all parts of the country and holding in subserviency a multitudinous army of office-holders, shall be absolutely without motive or inducement to employ it for any other purpose than the public good:

And whereas the character of Republican Institutions requires that the Chief Magistrate shall be above all suspicion of using the machinery of which he is the official head to promote his own personal aims: Therefore,

Be it resolved by the Senate and House of Representatives, &c., That the following Article is hereby proposed as an Amendment to the Constitution of the United States, and, when ratified by the Legislatures of three-fourths of the several States, shall be valid, to all intents and purposes, as part of the Constitution; to wit:

ARTICLE —.

SEC. 1. No person who has once held the office of President of the United States shall be thereafter eligible to that office.

SEC. 2. This Amendment shall not take effect until after the 4th March, 1873.

On motion of Mr. Sumner, the resolution was ordered to lie on the table, and be printed.

THE BEST PORTRAITS IN ENGRAVING.

ARTICLE IN "THE CITY," AN ILLUSTRATED MAGAZINE, NEW YORK, JANUARY 1, 1872.

ENGRAVING is one of the Fine Arts, and in this beautiful family has been the especial handmaiden of Painting. Another sister is now coming forward to join this service, lending to it the charm of color. If, in our day, the "Chromo" can do more than Engraving, it cannot impair the value of the early masters. With them there is no rivalry or competition. Historically, as well as æsthetically, they will be masters always.

Everybody knows something of engraving, as of printing, with which it was associated in origin. School-books, illustrated papers, and shop-windows are the ordinary opportunities open to all. But, while creating a transient interest, or perhaps quickening the taste, they furnish little with regard to the art itself, especially in other days. And yet, looking at an engraving, like looking at a book, may be the beginning of a new pleasure and a new study.

Each person has his own story. Mine is simple. Suffering from continued prostration, disabling me from the ordinary activities of life, I turned to engravings for

employment and pastime. With the invaluable assistance of that devoted connoisseur, the late Dr. Thies, I went through the Gray Collection at Cambridge, enjoying it like a picture-gallery. Other collections in our country were examined also. Then, in Paris, while undergoing severe medical treatment, my daily medicine for weeks was the vast cabinet of engravings, then called Imperial, now National, counted by the million, where was everything to please or instruct. Thinking of those kindly portfolios, I make this record of gratitude, as to benefactors. Perhaps some other invalid, seeking occupation without burden, may find in them the solace that I did. Happily, it is not necessary to visit Paris for the purpose. Other collections, on a smaller scale, will furnish the same remedy.

In any considerable collection Portraits occupy an important place. Their multitude may be inferred, when I mention that in one series of portfolios in the Paris Cabinet I counted no less than forty-seven portraits of Franklin and forty-three of Lafayette, with an equal number of Washington, while all the early Presidents were numerously represented. But in this large company there are very few possessing artistic value. The great portraits of modern times constitute a very short list, like the great poems or histories; and it is the same with engravings as with pictures. Sir Joshua Reynolds, explaining the difference between an historical painter and a portrait-painter, remarks that the former "paints man in general; a portrait-painter a particular man, and consequently a defective model."[1] A portrait, therefore, may be an accurate presentment of its subject without æsthetic value.

[1] Discourse IV.

But here, as in other things, genius exercises its accustomed sway without limitation. Even the difficulties of "a defective model" did not prevent Raphael, Titian, Rembrandt, Rubens, Velasquez, or Van Dyck from producing portraits precious in the history of Art. It would be easy to mention heads by Raphael yielding in value to only two or three of his larger masterpieces, like the Dresden Madonna. Charles the Fifth stooped to pick up the pencil of Titian, saying, "It becomes Cæsar to serve Titian!" True enough; but this unprecedented compliment from the imperial successor of Charlemagne attests the glory of the portrait-painter. The female figures of Titian, so much admired under the names of Flora, La Bella, his Daughter, his Mistress, and even his Venus were portraits from life. Rembrandt turned from his great triumphs in his own peculiar school to portraits of unwonted power; so also did Rubens, showing that in this department his universality of conquest was not arrested. To these must be added Velasquez and Van Dyck, each of infinite genius, who won fame especially as portrait-painters. And what other title has Sir Joshua himself?

Historical pictures are often collections of portraits arranged so as to illustrate an important event. Such is the famous *Peace of Münster*, by Terburg, just presented by a liberal Englishman to the National Gallery at London. Here are the plenipotentiaries of Spain and the United Provinces joining in the ratification of the treaty which, after eighty years of war, gave peace and independence to the latter.[1] The engraving by Suyderhoef

[1] On the subject of this picture, see Wornum, *Descriptive and Historical Catalogue of the Pictures in the National Gallery, Foreign Schools*, p. 288; also, Larousse, *Dictionnaire Universel*, Tom. IV. p. 932, art. CONGRÈS DE MUNSTER.

is rare and interesting. Similar in character is *The Death of Chatham,* by Copley, where the illustrious statesman is surrounded by the peers he had been addressing, — every one a portrait. To this list must be added the pictures by Trumbull in the Rotunda of the Capitol at Washington, especially *The Declaration of Independence,* in which Thackeray took a sincere interest. Standing before these, the author and artist said to me, "These are the best pictures in the country," — and he proceeded to remark on their honesty and fidelity; but doubtless their real value is in their portraits.

Unquestionably the finest assemblage of portraits anywhere is that of the artists occupying two halls in the Uffizi Gallery at Florence, being autographs contributed by the masters themselves. Here is Raphael, with chestnut-brown hair, and dark eyes full of sensibility, painted when he was twenty-three, and known by the engraving of Forster, — Giulio Romano, in black and red chalk on paper, — Masaccio, one of the fathers of painting, much admired, — Leonardo da Vinci, beautiful and grand, — Titian, rich and splendid, — Pietro Perugino, remarkable for execution and expression, — Albert Dürer, rigid, but masterly, — Gerard Dow, finished according to his own exacting style, — and Reynolds, with fresh English face: but these are only examples of this incomparable collection, which was begun as far back as the Cardinal Leopoldo de' Medici, and has been happily continued to the present time. Here are the lions, painted by themselves, — except, perhaps, the foremost of all, Michel Angelo, whose portrait seems the work of another. The impression from this collection is confirmed by that of any group of historic artists. Their portraits excel those of statesmen, soldiers, or divines,

as is easily seen by engravings accessible to all. The engraved heads in Arnold Houbraken's biographies of the Dutch and Flemish painters, in three volumes, are a family of rare beauty.[1]

The relation of engraving to painting is often discussed; but nobody has treated it with more knowledge or sentiment than the consummate engraver Longhi, in his interesting work "La Calcografia."[2] Dwelling on the general aid it renders to the lovers of Art, he claims for it greater merit in "publishing and immortalizing the portraits and actions of eminent men as an example to the present and future generations," and, "better than any other art, serving as a vehicle for the most extended and remote propagation of a deserved celebrity."[3] Even great monuments in porphyry and bronze are less durable than these light and fragile prints, subject to all the chances of wind, water, and fire, but prevailing by their numbers where hardness and tenacity succumb. In other words, it is with engravings as with books; nor is this the only resemblance between them. According to Longhi, an engraving is not a copy or an imitation, as

[1] De Groote Schouburgh der Nederlantsche Konstschilders en Schilderessen. Gravenhage, 1753.

[2] La Calcografia propriamente detta, ossia L'Arte d'incidere in Rame coll' Acqua-forte, col Bulino e colla Punta: Ragionamenti letti nelle adunanze dell' I. R. Istituto di Scienze, Lettere ed Arte del Regno Lombardo-Veneto. Da Giuseppe Longhi. Vol. I. Concernénte la Teorica dell' Arte. Milano, 1830. — The death of the author the following year prevented the completion of his work; but in 1837 a supplementary volume on the Practice of the Art, by Carl Barth, appeared in connection with a translation by him of Longhi's volume, under the title, *Die Kupferstecherei oder die Kunst in Kupfer zu stechen und zu ätzen.* (No translation has been made into French or English.) This rare volume is in the Congressional Library, among the books which belonged originally to Hon. George P. Marsh, our excellent and most scholarly Minister in Italy. I asked for it in vain at the Paris Cabinet of Engravings, and also at the Imperial Library.

[3] La Calcografia, p. 31.

is sometimes insisted, but a translation.[1] The engraver translates into another language, where light and shade supply the place of colors. The duplication of a book in the same language is a copy, and so is the duplication of a picture in the same material. Evidently an engraving is not a copy; it does not reproduce the original picture, except in drawing and expression: nor is it a mere imitation; but, as Bryant's Homer and Longfellow's Dante are presentations of the great originals in another language, so is the engraving a presentation of painting in another material, which is like another language.

Thus does the engraver vindicate his art. But nobody can examine a choice print without feeling that it has a merit of its own, different from any picture, and inferior only to a good picture. A work of Raphael, or any of the great masters, is better in an engraving of Longhi or Morghen than in any ordinary copy, and would probably cost more in the market. A good engraving is an undoubted work of Art; but this cannot be said of many pictures, which, like Peter Pindar's razors, seem made only to sell.

Much that belongs to the painter belongs also to the engraver, who must have the same knowledge of contours, the same power of expression, the same sense of beauty, and the same ability in drawing with sureness of sight, as if, according to Michel Angelo, he had "a pair of compasses in his eyes." These qualities in a high degree make the artist, whether painter or engraver, naturally excel in portraits. But choice portraits are less numerous in engraving than in painting, for the reason that painting does not always find a successful translator.

[1] La Calcografia, pp. 8-13.

The earliest engraved portraits which attract attention are by Albert Dürer, who engraved his own work, translating himself. His eminence as painter was continued as engraver. Here he surpassed his predecessors, —Martin Schoen in Germany, and Mantegna in Italy,— so that Longhi does not hesitate to say that "he was the first who carried this art from infancy, in which he found it, to a condition not far from flourishing adolescence."[1] But while recognizing his great place in the history of engraving, it is impossible not to see that he is often hard and constrained, if not unfinished. His portrait of Erasmus is justly famous, and is conspicuous among the prints exhibited in the British Museum. It is dated 1526, two years before the death of Dürer, and has helped to extend the fame of the universal scholar and approved man of letters, who in his own age filled a sphere not unlike that of Voltaire in a later century. There is another portrait of Erasmus by Holbein, often repeated; so that two great artists have contributed to his renown. That by Dürer is admired. The general fineness of touch, with the accessories of books and flowers, shows the care in its execution; but it wants expression, and the hands are far from graceful.

Another most interesting portrait by Dürer, executed in the same year with the Erasmus, is Philip Melanchthon, the Saint John of the Reformation, sometimes called "The Teacher of Germany," —*Preceptor Germaniæ*. Luther, while speaking of himself as rough, boisterous, stormy, and altogether warlike, says, "But Master Philippus moves gently and quietly along, ploughs and plants, sows and waters with pleasure, according as God

[1] La Calcografia, p. 71.

hath given him His gifts richly."[1] At the date of the print he was twenty-nine years of age, and the countenance shows the mild reformer.

Agostino Caracci, of the Bolognese family, memorable in Art, added to considerable success as painter undoubted triumphs as engraver. His prints are numerous, and many are regarded with favor; but in the long list not one is so sure of that longevity allotted to Art as his portrait of Titian, which bears date 1587, eleven years after the death of the latter. Over it is the inscription, "*Titiani Vecellii Pictoris celeberrimi ac famosissimi vera effigies*," — to which is added beneath, "*Cujus nomen orbis continere non valet.*" Although founded on originals by Titian himself, it was probably designed by the remarkable engraver. It is very like, and yet unlike, the familiar portrait of which we have a recent engraving by Mandel, from a repetition in the Gallery of Berlin. Looking at it, we are reminded of the terms by which Vasari described the great painter: "*Giudizioso, bello e stupendo.*"[2] Such a head, with such visible power, justifies these words, or at least makes us believe them entirely applicable. It is broad, bold, strong, and instinct with life.

This print, like the Erasmus of Dürer, is among those selected for exhibition at the British Museum; and it

[1] "Ich bin dazu geboren, dass ich mit den Rotten und Teufeln muss kriegen und zu Felde liegen; darum meine Bücher viel stürmisch und kriegerisch sind. Ich muss die Klötze und Stämme ausreuten, Dornen und Hecken wegbauen, die Plätzen ausfüllen, und bin der grobe Waldrechter, der Bahn brechen und zurichten muss. Aber M. Philipps fahret säuberlich und stille daher, bauet und pflanzet, säet und begeusst, mit Lust, nachdem Gott ihm hat gegeben seine Gaben reichlich." — *Vorrede auf Philippi Melanchthonis Auslegung der Epistel an die Colosser:* Sämtliche Schriften, (Halle, 1740–53,) 1 Theil, coll. 199–200.

[2] Vite, (Firenze, 1857,) Vol. XIII. p. 39.

deserves the honor. Though only paper with black lines, it is, by the genius of the artist, as good as a picture. In all engraving nothing is better.

Contemporary with Caracci was Heinrich Goltzius, at Haarlem, excellent as painter, but, like the Italian, preëminent as engraver. His prints show mastery of the art, making something like an epoch in its history. His unwearied skill in the use of the burin appears in a tradition gathered by Longhi from Wille, — that, having commenced a line, he carried it to the end without once stopping, while the long and bright threads of copper turned up were brushed aside by his flowing beard, which at the end of a day's labor so shone in the light of the candles, that his companions nicknamed him *The Man with the Golden Beard.*[1] There are prints by him which shine more than his beard. Among his masterpieces is the portrait of his instructor, Dirk Coornhert, engraver, poet, musician, and vindicator of his country, and author of the National air, "William of Nassau," whose passion for Liberty did not prevent him from giving to the world translations of Cicero's "Offices" and Seneca's treatise on Beneficence. But the portrait of the engraver himself, as large as life, is one of the most important in the art. Among the numerous prints by Goltzius, these two will always be conspicuous.

In Holland Goltzius had eminent successors. Among these were Paulus Pontius, designer and engraver, whose portrait of Rubens is of great life and beauty, and Rembrandt, who was not less masterly in engraving than in painting, as appears sufficiently in his portraits of the Burgomaster Six, the two Coppenols, the Advocate

[1] La Calcografia, pp. 99 - 100, note.

Tolling, and the goldsmith Lutma, all showing singular facility and originality. Contemporary with Rembrandt was Cornelis de Visscher, also designer and engraver, whose portraits were unsurpassed in boldness and picturesque effect. At least one authority has accorded to this artist the palm of engraving, hailing him as "Coryphæus of the Art."[1] Among his successful portraits is that of a Cat; but all yield to what are known as *The Great Beards*, being the portraits of Willem de Ryck, an ophthalmist at Amsterdam, and Gellius de Bouma, the Zutphen ecclesiastic. The latter is especially famous. In harmony with the beard is the heavy face, seventy-seven years old, showing the fulness of long-continued potations, and hands like the face, original and powerful, if not beautiful.

In contrast with Visscher was his countryman Van Dyck, who painted portraits with constant beauty, and carried into etching the same Virgilian taste and skill. His aquafortis was not less gentle than his pencil. Among his etched portraits I would select that of Snyders, the animal-painter, as supremely beautiful. M. Renouvier, in his learned and elaborate work, "Des Types et des Manières des Maîtres Graveurs," though usually moderate in praise, speaks of these sketches as possessing "a boldness and a delicacy which charm, being taken at the height of the genius of the painter who best knew how to idealize portrait painting."[2]

Such are illustrative instances from Germany, Italy, and Holland. As yet, power rather than beauty pre-

[1] "Se cieca fede prestarsi dovesse alle decisioni dell' Enciclopedia metodica, noi dovremmo ammirare in Cornelio Wisscher il corifeo dell' arte nostra, dicendo essa, che gli artisti s' accordano in aggiudicargli la palma dell' incisione." — *La Calcografia*, p. 144.

[2] XVI^e^ et XVII^e^ Siècles, p. 122.

sided, unless in the etchings of Van Dyck. But the reign of Louis the Fourteenth was beginning to assert a supremacy in engraving as in literature. The great school of French engravers which appeared at this time brought the art to a splendid perfection, which many think has not been equalled since; so that Masson, Nanteuil, Edelinck, and Drevet may claim fellowship in genius with their immortal contemporaries, Corneille, Racine, La Fontaine, and Molière.

The school was opened by Claude Mellan, more known as engraver than painter, and also author of most of the designs he engraved. His life, beginning with the sixteenth century, was protracted to nearly ninety years, not without signal honor; for his name appears among the "Illustrious Men" of France, in the beautiful volumes of Perrault, which is also a homage to the art he practised. One of his works, for a long time much admired, was described by this author: —

"It is a head of Christ, designed and shaded with his crown of thorns, and the blood that trickles on all sides, by one single stroke, which, beginning at the tip of the nose, and continuing always in a curve, forms very exactly all that is represented in the plate, merely by the different thickness of this stroke, which, according as it is more or less broad, makes the eyes, nose, mouth, cheeks, hair, blood, and thorns; the whole so well represented, and with such expression of pain and affliction, that nothing is more sad or more touching."[1]

This print is known as *The Sudarium of Saint Veronica.* Longhi records that it was thought at the time

[1] Les Hommes Illustres, Tom. II. p. 97. — The excellent copy of this work in the Congressional Library belonged to Mr. Marsh. The prints are early impressions.

"inimitable," and was "praised to the skies," — adding, "But people think differently now."[1] At best it is a curiosity among portraits. A traveller reported some time ago that it was the sole print on the walls of the room occupied by the Director of the Imperial Cabinet of Engravings at St. Petersburg.

Morin was a contemporary of Mellan, and less famous at the time. His style of engraving was peculiar, being a mixture of strokes and dots, but so harmonized as to produce a pleasing effect. One of the best engraved portraits in the history of the art is his Cardinal Bentivoglio; but here he translated Van Dyck, whose picture is among his best. A fine impression of this print is a choice possession.

Among French masters Antoine Masson is conspicuous for brilliant hardihood of style, which, though failing in taste, is powerful in effect. Metal, armor, velvet, feather, seem as if painted. He is also most successful in the treatment of hair. His immense skill made him welcome difficulties, as if to show his ability in overcoming them. His print of Henri de Lorraine, Comte d'Harcourt, known as *Cadet à la Perle*, from the pearl in the ear, with the date 1667, is often placed at the head of engraved portraits, although not particularly pleasing or interesting. The vigorous countenance is aided by the gleam and sheen of the various substances entering into the costume. Less powerful, but having a charm of its own, is that of Brisacier, known as *The Gray-Haired Man*, engraved in 1664. The remarkable representation of hair in this print has been a model for artists, especially for Longhi, who recounts that he copied it in his head of Washington.[2] Somewhat similar

[1] La Calcografia, p. 116.
[2] Ibid., p. 165, note.

is the head of Charrier, the Criminal Judge at Lyons. Though inferior in hair, it surpasses the other in expression.

Nanteuil was an artist of different character, being to Masson as Van Dyck to Visscher, with less of vigor than beauty. His original genius was refined by classical studies and quickened by diligence. Though dying at the age of forty-eight, he had executed as many as two hundred and eighty plates, nearly all portraits. The favor he enjoyed during life has not diminished with time. His works illustrate the reign of Louis the Fourteenth, and are still admired. Among these are portraits of the King, Anne of Austria, Johan Baptist van Steenberghen, called *The Advocate of Holland*, a Heavy Dutchman, François de la Mothe-Le-Vayer, a fine and delicate work, Turenne, Colbert, Lamoignon, the poet Loret, Maridat de Serrière, Louise-Marie de Gonzague, Louis Hesselin, Christina of Sweden, — all masterpieces; but above these is the Pomponne de Bellièvre, foremost among his masterpieces, and a chief masterpiece of Art, being, in the judgment of more than one connoisseur, the most beautiful engraved portrait that exists. That excellent authority Dr. Thies, who knew engraving more thoroughly and sympathetically than any person I remember in our country, said, in a letter to myself, as long ago as March, 1858, —

"When I call Nanteuil's Pomponne the handsomest engraved portrait, I express a conviction to which I came when I studied all the remarkable engraved portraits at the royal cabinet of engravings in Dresden, and at the large and exquisite collection there of the late King of Saxony, and in which I was confirmed, or perhaps to which I was led, by the director of the two establishments, the late Professor Frenzel."

And after describing this head, the learned connoisseur proceeds: —

"There is an air of refinement (*Vornehmheit*) round the mouth and nose as in no other engraving. Color and life shine through the skin, and the lips appear red."

It is bold, perhaps, thus to exalt a single portrait, giving to it the palm of Venus; nor do I know that it is entirely proper to classify portraits according to beauty. In disputing about beauty, we are too often lost in the variety of individual tastes; and yet each person knows when he is touched. In proportion as multitudes are touched, there must be merit. As in music a simple heart-melody is often more effective than any triumph over difficulties or bravura of manner, so in engraving, the sense of the beautiful may prevail over all else; and this is the case with the Pomponne, although there are portraits by others showing higher art.

No doubt there have been as handsome men, whose portraits were engraved, but not so well. I know not if Pomponne was what would be called a handsome man, although his air is noble and his countenance bright; but among portraits more boldly, delicately, or elaborately engraved, there are very few to contest the palm of beauty.[1]

And who is this handsome man to whom the engraver has given a lease of fame? Son, nephew, and grandson

[1] Something in this success is doubtless due to Le Brun, whom Nanteuil translated, — especially as an earlier portrait of Pomponne by him is little regarded. But it is the engraver, and not the painter, that is praised, — thus showing the part which his art may perform.

There is much in this portrait, especially in the eyes, to suggest the late Sir Frederick Bruce, British Minister at Washington, who, when a youth in the diplomatic suite of Lord Ashburton, was called by Mr. Choate "the Corinthian part of the British Legation."

of high dignitaries in Church and State, — with two grandfathers Chancellors of France, two uncles Archbishops, his father President of the Parliament of Paris and Councillor of State, — himself at the head of the magistracy of France, First President of Parliament, according to an inscription on the engraving, *Senatus Galliarum Princeps*, Ambassador to Italy, Holland, and England, charged in the last-named country by Cardinal Mazarin with the impossible duty of making peace between the Long Parliament and Charles the First, and at his death great benefactor of the General Hospital of Paris, bestowing upon it riches and the very bed on which he died. Such is the simple catalogue; and yet it is all forgotten.

A Funeral Panegyric pronounced at his death, now before me in the original pamphlet of the time,[1] testifies to more than family or office. In himself he was much, and not of those who, according to the saying of Saint Bernard, "give out smoke rather than light."[2] "Pure glory and innocent riches"[3] were his; and he was the more precious in the sight of all good men, that he showed himself incorruptible, and not to be bought at any price. It were easy for him to have turned a deluge of wealth into his house; but he knew that gifts insensibly entangle, — that the specious pretext of gratitude is the snare in which the greatest souls allow

[1] Panegyrique Funebre de Messire Pomponne de Bellièvre, Premier President au Parlement. Prononcé à l' Hostel Dieu de Paris le 17 Avril 1657, au Service solennel fait par l'ordre de Messieurs les Administrateurs. Par un Chanoine Regulier de la Congregation de France. A Paris, M. DC. LVII. — The Dedication shows this to have been the work of F. L. Alemant.

[2] "Jettent plutost de la fumée que de la lumière": "magis de sublime fumantem quam flammantem." — *Præfat. in vit. S. Malach.*

[3] An application by the preacher, of the first clause of his text: "*Gloria et divitiæ in domo ejus, et justitia ejus manet in sæculum sæculi.*" — Ps. cxi. 3, Vulg.

themselves to be caught, — that a man covered with favors has difficulty in setting himself against injustice in all its forms, — and that a magistrate divided between a sense of obligations received and the care of the public interest, which he ought always to promote, is a paralytic magistrate, a magistrate deprived of a moiety of himself. So spoke the preacher, while he portrayed a charity tender and effective for the wretched, a vehemence just and inflexible toward the dishonest and wicked, and a sweetness noble and beneficent for all; dwelling also on his countenance, which had nothing of that severe and sour austerity that renders justice to the good only as if with regret, and to the guilty only in anger; then on his pleasant and gracious address, his intellectual and charming conversation, his ready and judicious replies, his agreeable and intelligible silence, — even his refusals being well received and obliging, — while, amidst all the pomp and splendor accompanying him, there shone in his eyes a certain air of sweetness and majesty, which secured for him, and for justice itself, love as well as respect. His benefactions were constant. Not content with merely giving, he gave with a beautiful manner, still more rare. He could not abide beauty of intelligence without goodness of soul; and he preferred always the poor, having for them not only compassion, but a sort of reverence. He knew that the way to take the poison from riches was to let the poor taste of them. The sentiment of Christian charity for the poor, who were to him in the place of children, was his last thought, — as witness especially the General Hospital endowed by him, and represented by the preacher as the greatest and most illustrious work ever undertaken by charity the most heroic.

Thus lived and died the splendid Pomponne de Bellièvre, with no other children than his works. Celebrated at the time by a Funeral Panegyric now forgotten, and placed among the Illustrious Men of France in a work remembered only for its engraved portraits,[1] his famous life shrinks in the voluminous "Biographie Universelle" of Michaud to the sixth part of a single page, and in the later "Biographie Générale" of Didot disappears entirely. History forgets to mention him. But the lofty magistrate, ambassador, and benefactor, founder of a great hospital, cannot be entirely lost from sight so long as his portrait by Nanteuil holds a place in Art.

Younger than Nanteuil by ten years, Gerard Edelinck excelled him in genuine mastery. Born at Antwerp, he became French by adoption, occupying apartments in the Gobelins, and enjoying a pension from Louis the Fourteenth. Longhi says that he is "the engraver whose works, not only in my opinion, but in that of the best judges, deserve the first place among exemplars of the art"; and he attributes to him, "in a high degree, design, chiaroscuro, aërial perspective, local tints, softness, lightness, variety, in short everything which can form the most exact representation of the true and beautiful without the aid of color." Others may have surpassed him in particular things, but, according to the Italian teacher, "he still remains by common consent the prince of engraving."[2] Another critic calls him "king."

It requires no remarkable knowledge to recognize his great merits. Evidently he is a master, exercising sway with absolute art, and without attempt to bribe

[1] *Les Hommes Illustres*, par Perrault, — cited *ante*, p. 337. See, Tom. II. p. 53, a memoir of Bellièvre, with a portrait by Edelinck.

[2] La Calcografia, pp. 172, 177.

the eye by special effects of light, as on metal or satin. Among his conspicuous productions is *The Tent of Darius*, a large engraving on two sheets, after Le Brun, where the family of the Persian monarch prostrate themselves before Alexander, who approaches with Hephæstion. There is also a *Holy Family*, after Raphael, and *The Battle of the Standard*, after Leonardo da Vinci. But these are less interesting than his numerous portraits, among which that of Philippe de Champagne is the chief masterpiece; and there are others of signal merit, including especially Madame Helyot, or *La belle Religieuse*, a beautiful French coquette praying before a crucifix; Martin van den Bogaert (Des Jardins,) the sculptor; Frédéric Léonard, Printer to the King; Mouton, the Lute-Player; Nathanael Dilgerus, with a venerable beard white with age; Jules Hardouin Mansart, the architect; also a portrait of Pomponne de Bellièvre, which will be found among the prints of Perrault's "Illustrious Men."

The Philippe de Champagne is the head of that eminent French artist after a painting by himself, and it contests the palm with the Pomponne. Mr. Marsh, who is an authority, prefers it. Dr. Thies, who places the latter first in beauty, is constrained to allow that the other is "superior as a work of the graver," being executed with all the resources of the art in its chastest form. The enthusiasm of Longhi finds expression in unusual praise: —

"The work which goes most to my blood, and of which Edelinck himself was justly proud, is the portrait of Champagne. I shall die before I cease often to contemplate it with ever new wonder. Here is seen how he was equally great as designer and engraver."[1]

[1] La Calcografia, p. 176.

And he then dwells on various details, — the bones, the skin, the flesh, the eyes living and seeing, the moistened lips, the chin covered with a beard unshaven for many days, and the hair in all its forms.

Between the rival portraits by Nanteuil and Edelinck it is unnecessary to decide. Each is beautiful. In looking at them we recognize anew the transient honors of public service. The present fame of Champagne surpasses that of Pomponne. The artist outlives the magistrate. But does not the poet tell us that "the artist never dies"?

As Edelinck passed from the scene the family of Drevet appeared, especially the son, Pierre Imbert Drevet, born in 1697, who developed a rare excellence, improving even upon the technics of his predecessor, and gilding his refined gold. The son was born engraver, for at the age of thirteen he produced an engraving of exceeding merit. Like Masson he manifested a singular skill in rendering different substances by the effect of light, and at the same time gave to flesh a softness and transparency which remain unsurpassed. To these he added great richness in picturing costumes and drapery, especially in lace.

He was eminently a portrait engraver, which I must insist is the highest form of the art, as the human face is the most important object for its exercise. Less clear and simple than Nanteuil, and less severe than Edelinck, he gave to the face individuality of character, and made his works conspicuous in Art. If there was excess in the accessories, it was before the age of *Sartor Resartus*, and he only followed the prevailing style in the popular paintings of Hyacinthe Rigaud. Art in all its forms had become florid, if not meretricious; and Drevet was a representative of his age.

Among his works are important masterpieces. I name only Bossuet, the famed *Eagle of Meaux;* Samuel Bernard, the rich Councillor of State; Fénelon, the persuasive teacher and writer; Cardinal Dubois, the unprincipled minister and favorite of the Regent of France; and Adrienne Le Couvreur, the beautiful and unfortunate actress, linked in love with Marshal Saxe. The portrait of Bossuet has everything to attract and charm. There stands the powerful defender of the Catholic Church, master of French style, and most renowned pulpit orator of France, in episcopal robes, with abundant lace, which is the perpetual envy of the fair who look at this transcendent effort. The ermine of Dubois is exquisite; but the general effect of this portrait does not compare vith the Bossuet, next to which, in fascination, I put the Adrienne. At her death the actress could not be buried in consecrated ground; but through Art she has the perpetual companionship of the greatest bishop of France.

With the younger Drevet closed the classical period of portraits in engraving, as just before had closed the Augustan age of French literature. Louis the Fourteenth decreed engraving a Fine Art, and established an Academy for its cultivation. Pride and ostentation in the king and the great aristocracy created a demand, which the genius of the age supplied. The heights that had been reached could not be maintained. There were eminent engravers still, but the zenith had been passed. Balechou, who belonged to the reign of Louis the Fifteenth, and Beauvarlet, whose life was protracted beyond the Reign of Terror, both produced portraits of merit. The former is noted for a certain clearness and brill-

iancy, but with a hardness as of brass or marble, and without entire accuracy of design; the latter has much softness of manner. They were the best artists of France at the time, but none of their portraits are famous. To these may be added another contemporary artist, without predecessor or successor, Étienne Ficquet, unduly disparaged in one of the dictionaries as "a reputable French engraver," but undoubtedly remarkable for small portraits, not unlike miniatures, of exquisite finish. Among these the rarest and most admired are La Fontaine, Madame de Maintenon, Rubens, and Van Dyck.

Two other engravers belong to this intermediate period, although not French in origin, — Georg Friedrich Schmidt, born at Berlin, 1712, and Johann Georg Wille, born near the small town of Königsberg, in the Grand Duchy of Hesse-Darmstadt, 1717, but, attracted to Paris, they became the greatest engravers of the time. Their work is French, and they are the natural development of that classical school.

Schmidt was the son of a poor weaver, and lost six precious years as a soldier in the artillery at Berlin. Owing to the smallness of his size he was at length dismissed, when he surrendered to a natural talent for engraving. Arriving at Strasburg, on his way to Paris, he fell in with Wille, who joined him in his journey, and eventually in his studies. The productions of Schmidt show ability, originality, and variety, rather than taste. His numerous portraits are excellent, being free and life-like, while the accessories of embroidery and drapery are rendered with effect. As an etcher he ranks next after Rembrandt. Of his portraits executed with the graver, that of the Empress Elizabeth of Russia is

usually called the most important, perhaps on account of the imperial theme, — and next, those of Count Rasoumowsky, Count Esterhazy, and Mounsey, Court Physician, which he engraved while in St. Petersburg, whither he was called by the Empress, founding there the Academy of Engraving. But his real masterpieces are unquestionably Pierre Mignard and La Tour, French painters, the latter represented laughing.

Wille lived to old age, not dying till 1808. During this long life he was active in the art to which he inclined naturally. His mastery of the graver was perfect, lending itself especially to the representation of satin and metal, although less happy with flesh. His *Satin Gown*, or *L'Instruction Paternelle*, after Terburg, and *Les Musiciens Ambulants*, after Dietrich, are always admired. Nothing of the kind in engraving is finer. His style was adapted to pictures of the Dutch school, and to portraits with rich surroundings. Of the latter the principal are Comte de Saint-Florentin, Marquis Poisson de Marigny, Jean de Boullongne, and Cardinal de Tencin.

Especially eminent was Wille as a teacher. Under his influence the art assumed new life, so that he became father of the modern school. His scholars spread everywhere, and among them are acknowledged masters. He was teacher of Bervic, whose portrait of Louis the Sixteenth in his coronation robes is of a high order, himself teacher of the Italian Toschi, who, after an eminent career, died as late as 1858; also teacher of P. A. Tardieu, himself teacher of the brilliant Desnoyers, whose portrait of the Emperor Napoleon in his coronation robes is the fit complement to that of Louis the Sixteenth; also teacher of the German, J. G. von Müller, himself

father and teacher of J. F. W. von Müller, engraver of the Sistine Madonna, in a plate whose great fame is not above its merit; also teacher of the Italian Vangelisti, himself teacher of the unsurpassed Longhi, in whose school were Anderloni and Jesi. Thus not only by his works, but by his famous scholars, did the humble gunsmith gain sway in Art.

Among portraits of this school deserving especial mention is that of King Jerome of Westphalia, brother of Napoleon, by the two Müllers above named, where the genius of the artists is most conspicuous, although the subject contributes little. As in the case of the Palace of the Sun, described by Ovid, "*materiam superabat opus.*"[1] This work is a beautiful example of skill in representation of fur and lace, not yielding even to Drevet.

Longhi was a universal master, and his portraits are only part of his work. That of Washington, which is rare, is evidently founded on Stuart's painting, but after a design of his own, which is now in the possession of the Swiss Consul at Venice. The artist particularizes the hair, as being modelled after the French master Masson.[2] The portraits of Michel Angelo and Dandolo, the venerable Doge of Venice, are admired; so also is the *Napoleon* as King of Italy, with the iron crown and finest lace. But his chief portrait is that of Eugène Beauharnais, Viceroy of Italy, full length, remarkable for the plume in the cap, which is finished with surpassing skill.

Contemporary with Longhi was another Italian engraver of widely extended fame, who was not the pro-

[1] Metam. Lib. II. 5.

[2] La Calcografia, pp. 165, 418.

duct of the French school, — Raffaello Morghen, born at Portici in 1761. His works have enjoyed a popularity beyond those of other masters, partly from the interest of their subjects, and partly from their soft and captivating style, although they do not possess the graceful power of Nanteuil and Edelinck, and are without variety. He was scholar and son-in-law of Volpato, of Rome, himself scholar of Wagner, of Venice, whose homely round faces were not high models in Art. The *Aurora* of Guido and the *Last Supper* of Leonardo da Vinci stand high in engraving, especially the latter, which occupied Morghen three years. Of his two hundred and fifty-four works no less than eighty-five are portraits, among which are the Italian poets, — Dante, Petrarc, Ariosto, Tasso, also Boccaccio, — and a head called Raphael, but supposed to be that of Bindo Altoviti, the great painter's friend,[1] and especially the Duke of Moncada on horseback, after Van Dyck, which has received warm praise. But none of his portraits is calculated to give greater pleasure than that of Leonardo da Vinci, which may vie in beauty even with the famous Pomponne. Here is the beauty of years and of serene intelligence. Looking at that tranquil countenance, it is easy to imagine the large and various capacities which made him not only painter, but sculptor, architect, musician, poet, discoverer, philosopher, even predecessor of Galileo and Bacon. Such a character deserves the immortality of Art. Happily, an old Venetian engraving, reproduced in our day,[2] enables us to see this same countenance at an earlier period of life with sparkle in the eye.

[1] See Quatremère De Quincy, Histoire de la Vie et des Ouvrages de Raphaël, (Paris, 1833,) pp. 193–97.

[2] Les Arts au Moyen Age et à l'Epoque de la Renaissance, par Paul Lacroix, (Paris, 1869,) p. 298.

Raffaello Morghen left no scholars who have followed him in portraits; but his own works are still regarded, and a monument in Santa Croce, the Westminster Abbey of Florence, places him among the mighty dead of Italy.

Thus far nothing has been said of English engravers. Here, as in Art generally, England seems removed from the rest of the world,—"*Et penitus toto divisos orbe Britannos.*"[1] But though beyond the sphere of Continental Art, the island of Shakespeare was not inhospitable to some of its representatives. Van Dyck, Rubens, Sir Peter Lely, and Sir Godfrey Kneller, all Dutch artists, painted the portraits of Englishmen, and engraving was first illustrated by foreigners. Jacob Houbraken, another Dutch artist, born in 1698, was employed to execute portraits for Birch's "Heads of Illustrious Persons of Great Britain," published at London in 1743; and in these works may be seen the æsthetic taste inherited from his father, (the biographer of the Dutch artists,[2]) and improved by study of the French masters. Although without great force or originality of manner, many of these have positive beauty. I would name especially the *Sir Walter Raleigh* and *John Dryden.*

Different in style was Bartolozzi, the Italian, who made his home in England for forty years, ending in 1805, when he removed to Lisbon. The considerable genius which he possessed was spoiled by haste in execution, superseding that care which is an essential condition of Art. Hence sameness in his work, and indif-

[1] Virgil, Ecl. I. 67.

[2] Arnold Houbraken, De Groote Schouburgh der Nederlantsche Konstschilders en Schilderessen. Cited, *ante*, p. 331.

ference to the picture he copied. Longhi speaks of him as "most unfaithful to his archetypes," and, "whatever the originals, being always Bartolozzi."[1] Among his portraits of especial interest are several old wigs, as Mansfield and Thurlow; also the *Death of Chatham*, after the picture of Copley in the Vernon Gallery. But his prettiest piece undoubtedly is *Mary, Queen of Scots, with her little Son, James the First*, after what Mrs. Jameson calls "the lovely picture by Zuccaro at Chiswick."[2] In the same style are his vignettes, which are of acknowledged beauty.

Meanwhile a Scotchman, honorable in Art, comes upon the scene, — Sir Robert Strange, born in the distant Orkneys in 1721, who abandoned the law for engraving. As a youthful Jacobite he joined the Pretender in 1745, sharing the disaster of Culloden, and owing his safety from pursuers to a young lady dressed in the ample costume of the period, whom he afterwards married in gratitude, and they were both happy. He has a style of his own, rich, soft, and especially charming in the tints of flesh, making him a natural translator of Titian. His most celebrated engravings are doubtless the *Venus* and the *Danaë* after the great Venetian colorist; but the *Cleopatra*, though less famous, is not inferior in merit. His acknowledged masterpiece is the Madonna of St. Jerome, called "*The Day*," after the picture by Correggio in the Gallery of Parma; but his portraits after Van Dyck are not less fine, while they are more interesting, — as Charles the First, with a large hat, by the side of his horse, which the Marquis of Ham-

[1] La Calcografia, p. 209.

[2] Visits and Sketches at Home and Abroad, (London, 1834,) Vol. II. p. 188, note.

ilton is holding; and that of the same monarch standing in his ermine robes; also the three royal children, with two King Charles spaniels at their feet; also Henrietta Maria, the Queen of Charles. That with the ermine robes is supposed to have been studied by Raffaello Morghen, called sometimes an imitator of Strange.[1] To these I would add the rare autograph portrait of the engraver, being a small head after Greuzé, which is simple and beautiful.

One other name will close this catalogue. It is that of William Sharp, who was born at London in 1746, and died there in 1824. Though last in order, this engraver may claim kindred with the best. His first essays were the embellishment of pewter pots, from which he ascended to the heights of Art, showing a power rarely equalled. Without any instance of peculiar beauty, his works are constant in character and expression, with every possible excellence of execution: face, form, drapery, — all are as in Nature. His splendid qualities appear in the *Doctors of the Church,* which has taken its place as the first of English engravings. It is after the picture of Guido, once belonging to the Houghton Gallery, which in an evil hour for English taste was allowed to enrich the collection of the Hermitage at St. Petersburg; and I remember well that this engraving by Sharp was one of the few ornaments in the drawing-room of Macaulay when I last saw him, shortly before his lamented death. Next to the *Doctors of the Church* is his *Lear in the Storm,* after the picture by West, now in the Boston Athenæum, and his *Sortie from Gibraltar,* after the picture by Trumbull, also in the Boston Athenæum. Thus, through at least two of his masterpieces

[1] Longhi, La Calcografia, p. 199.

whose originals are among us, is our country associated with this great artist.

It is of portraits especially that I write, and here Sharp is truly eminent. All he did was well done; but two are models, — that of Mr. Boulton, a strong, well-developed country gentleman, admirably executed, and of John Hunter, the eminent surgeon, after the painting by Sir Joshua Reynolds, in the London College of Surgeons, unquestionably the foremost portrait in English Art, and the coëqual companion of the great portraits in the past; but here the engraver united his rare gifts with those of the painter.

In closing these sketches I would have it observed that this is no attempt to treat of engraving generally, or of prints in their mass or types. The present subject is simply Portraits, and I stop now just as we arrive at contemporary examples, abroad and at home, with the gentle genius of Mandel beginning to ascend the sky, and our own engravers appearing on the horizon. There is also a new and kindred art, infinite in value, where the Sun himself becomes artist, with works which mark an epoch.

WASHINGTON, 11th Dec., 1871.

NOTE. — When Mr. Sumner began the publication of his Works in 1870, he engaged Mr. George Nichols, of Cambridge, to read the proofs editorially. This Mr. Nichols did, with great care and ability, until about ten days before his death, which occurred on the 6th of July, 1882. His work of supervision ended on p. 334 of this volume.

EQUALITY BEFORE THE LAW PROTECTED BY NATIONAL STATUTE.

SPEECHES IN THE SENATE, ON HIS SUPPLEMENTARY CIVIL RIGHTS BILL, AS AN AMENDMENT TO THE AMNESTY BILL, JANUARY 15, 17, 31, FEBRUARY 5, AND MAY 21, 1872.

Brave Theseus, they were MEN like all before,
And human souls in human frames they bore,
With you to take their parts in earthly feasts,
With you to climb one heaven and sit immortal guests.
STATIUS, *Thebaïd*, tr. Kennett, Lib. XI.

I WAS fully convinced, that, whatever difference there is between the Negro and European in the conformation of the nose and the color of the skin, there is none in the genuine sympathies and characteristic feelings of our common nature. — MUNGO PARK, *Travels in the Interior Districts of Africa*, (London, 1816,) Vol. I. p. 80, Ch. 6.

The word MAN is thought to carry somewhat of dignity in its sound; and we commonly make use of this, as the last and the most prevailing argument against a rude insulter, "I am not a beast, a dog, but I am a Man as well as yourself." Since, then, human nature agrees equally to all persons, and since no one can live a sociable life with another who does not own and respect him as a Man, it follows, as a command of the Law of Nature, that *every man esteem and treat another as one who is naturally his equal, or who is a Man as well as he.* — PUFENDORF, *Law of Nature and Nations*, tr. Kennett, Book III., Ch. 2, § 1.

Carrying his solicitude still farther, Charlemagne recommended to the bishops and abbots, that, in their schools, "they should take care to make no difference between the sons of serfs and of freemen, *so that they might come and sit on the same benches to study grammar, music, and arithmetic.*" — GUIZOT, *History of France*, tr. Black, (London, 1872,) Vol. I. p. 239.

INTRODUCTION.

MAY 13, 1870, Mr. Sumner asked, and by unanimous consent obtained, leave to bring in a bill "Supplementary to an Act entitled 'An Act to protect all persons in the United States in their civil rights, and furnish the means of their vindication,' passed April 9, 1866," which was read the first and second times by unanimous consent, referred to the Committee on the Judiciary, and ordered to be printed.

July 7th, only a few days before the close of the session, Mr. Trumbull, Chairman of the Committee on the Judiciary, reported a bundle of bills, including that above mentioned, adversely, and all, on his motion, were postponed indefinitely.

January 20, 1871, Mr. Sumner again introduced the same bill, which was once more referred to the Committee on the Judiciary.

February 15th, Mr. Trumbull, from the Committee, again reported the bill adversely; but, at the suggestion of Mr. Sumner, it was allowed to go on the Calendar. Owing to the pressure of business in the latter days of the session, he was not able to have it considered, and the bill dropped with the session.

At the opening of the next Congress, March 9, 1871, Mr. Sumner again brought forward the same bill, which was read the first and second times, by unanimous consent, and on his motion ordered to lie on the table and be printed. In making this motion he said that the bill had been reported adversely twice by the Committee on the Judiciary; that, therefore, he did not think it advisable to ask its reference again; that nothing more important could be submitted to the Senate, and that it should be acted on before any adjournment of Congress. In reply to an inquiry from Mr. Hamlin, of Maine, Mr. Sumner proceeded to explain the bill, which he insisted was in conformity with the Declaration of Independence, and with the National Constitution, neither of which knows anything of the word "white." Then, announcing that he should do what he could to press the bill to a vote, he said:

"Senators may vote it down. They may take that responsibility; but I shall take mine, God willing."

At this session a resolution was adopted limiting legislation to certain enumerated subjects, among which the Supplementary Civil Rights bill was not named. March 17th, while the resolution was under discussion, Mr. Sumner warmly protested against it, and insisted that nothing should be done to prevent the consideration of his bill, which he explained at length. In reply to the objection that the session was to be short, and that there was no time, he said: "Make the time, then; extend the session; do not limit it so as to prevent action on a measure of such vast importance." An amendment moved by Mr. Sumner to add this bill to the enumerated subjects was rejected. The session closed without action upon it.

At the opening of the next session, Mr. Sumner renewed his efforts.

December 7, 1871, in presenting a petition from colored citizens of Albany, he remarked: "It seems to me the Senate cannot do better than proceed at once to the consideration of the supplementary bill now on our Calendar, to carry out the prayer of these petitioners"; and he wished Congress might be inspired to "make a Christmas present to their colored fellow-citizens of the rights secured by that bill."

December 20th, the Senate having under consideration a bill, which had already passed the House, "for the removal of the legal and political disabilities imposed by the third section of the Fourteenth Article of Amendment to the Constitution of the United States," Mr. Sumner, insisting upon justice before generosity, moved his Supplementary Civil Rights Bill as an amendment. A colloquy took place between himself and Mr. Hill, of Georgia, in which the latter opposed the amendment.

MR. SUMNER. I should like to bring home to the Senator that nearly one half of the people of Georgia are now excluded from the equal rights which my amendment proposes to secure; and yet I understand that the Senator disregards their condition, sets aside their desires, and proposes to vote down my proposition. The Senator assumes that the former Rebels are the only people of Georgia. Sir, I see the colored race in Georgia. I see that race once enslaved, for a long time deprived of all rights, and now under existing usage and practice despoiled of rights which the Senator himself is in the full enjoyment of.

MR. HILL. . . . . I never can agree in the proposition that, if there be a hotel for the entertainment of travellers, and two classes stop at it, and there is one dining-room for one class and

one for another, served alike in all respects, with the same accommodations, the same attention to the guests, there is anything offensive, or anything that denies the civil rights of one more than the other. Nor do I hold, that, if you have public schools, and you give all the advantages of education to one class as you do to another, but keep them separate and apart, there is any denial of a civil right in that. I also contend, that, even upon the railways of the country, if cars of equal comfort, convenience, and security be provided for different classes of persons, no one has a right to complain, if it be a regulation of the companies to separate them. . . . .

MR. SUMNER. Mr. President, we have a vindication on this floor of inequality as a principle and as a political rule.

MR. HILL. On which race, I would inquire, does the inequality to which the Senator refers operate?

MR. SUMNER. On both. Why, the Senator would not allow a white man in the same car with a colored man.

MR. HILL. Not unless he was invited, perhaps. [*Laughter.*]

MR. SUMNER. The Senator mistakes a substitute for equality. Equality is where all are alike. A substitute can never take the place of equality. It is impossible ; it is absurd. I must remind the Senator that it is very unjust, — it is terribly unjust. We have received in this Chamber a colored Senator from Mississippi ; but according to the rule of the Senator from Georgia we should have put him apart by himself ; he should not have sat with his brother Senators. Do I understand the Senator as favoring such a rule?

MR. HILL. No, Sir.

MR. SUMNER. The Senator does not.

MR. HILL. I do not, Sir, for this reason : it is under the institutions of the country that he becomes entitled by law to his seat here ; we have no right to deny it to him.

MR. SUMNER. Very well ; and I intend, to the best of my ability, to see that under the institutions of the country he is

equal everywhere. The Senator says he is equal in this Chamber. I say he should be equal in rights everywhere; and why not, I ask the Senator from Georgia?

MR. HILL. . . . . I am one of those who have believed, that, when it pleased the Creator of heaven and earth to make different races of men, it was His purpose to keep them distinct and separate. I think so now. . . . .

MR. SUMNER. The Senator admits that in the highest council-chamber there is, and should be, perfect equality before the law; but descend into the hotel, on the railroad, within the common school, and there can be no equality before the law. The Senator does not complain because all are equal in this Chamber. I should like to ask him, if he will allow me, whether, in his judgment, the colored Representatives from Georgia and South Carolina in the other Chamber ought not on railroads and at hotels to have like rights with himself? I ask that precise question.

MR. HILL. I will answer that question in this manner: I myself am subject in hotels and upon railroads to the regulations provided by the hotel proprietors for their guests, and by the railroad companies for their passengers. I am entitled, and so is the colored man, to all the security and comfort that either presents to the most favored guest or passenger; but I maintain that proximity to a colored man does not increase my comfort or security, nor does proximity to me on his part increase his, and therefore it is not a denial of any right in either case.

MR. SUMNER. May I ask the Senator if he is excluded from any right on account of his color? The Senator says he is sometimes excluded from something at hotels or on railroads. I ask whether any exclusion on account of color bears on him?

MR. HILL. I answer the Senator. I have been excluded from ladies' cars on railroads. I do not know on what account precisely; I do not know whether it was on account of my color; but I think it more likely that it was on account of my sex. [*Laughter.*]

MR. SUMNER. But the Senator, as I understand, insists that it is proper on account of color. That is his conclusion.

MR. HILL. No; I insist that it is no denial of a right, provided all the comfort and security be furnished to passengers alike.

MR. SUMNER. The Senator does not seem to see that any rule excluding a man on account of color is an indignity, an insult, and a wrong; and he makes himself on this floor the representative of indignity, of insult, and of wrong to the colored race. Why, Sir, his State has a large colored population, and he denies their rights.

MR. HILL. If the Senator will allow me, I will say to him that it will take him and others, if there should be any others who so believe, a good while to convince the colored people of the State of Georgia, who know me, that I would deprive them of any right to which they are entitled, though it were only technical; but in matters of pure taste I cannot get away from the idea that I do them no injustice, if I separate them on some occasions from the other race. . . . .

MR. SUMNER. The Senator makes a mistake which has been made for a generation in this Chamber, confounding what belongs to society with what belongs to rights. There is no question of society. The Senator may choose his associates as he pleases. They may be white or black, or between the two. That is simply a social question, and nobody would interfere with it. The taste which the Senator announces he will have free liberty to exercise, selecting always his companions; but when it comes to rights, there the Senator must obey the law, and I insist that by the law of the land all persons without distinction of color shall be equal in rights. Show me, therefore, a legal institution, anything created or regulated by law, and I show you what must be opened equally to all without distinction of color. Notoriously, the hotel is a legal institution, originally established by the Common Law, subject to minute provisions and regulations; notoriously, public conveyances are common carriers subject to a law of their own; notoriously, schools are public institutions created and maintained by law; and now I simply insist that in the enjoyment of these institutions there shall be no exclusion on account of color.

. . . . . .

MR. HILL. I must confess, Sir, that I cannot see the magni-

tude of this subject. I object to this great Government descending to the business of regulating the hotels and the common taverns of this country, and the street railroads, stage-coaches, and everything of that sort. It looks to me to be a petty business. . . . .

MR. SUMNER. I would not have my country descend, but ascend. It must rise to the heights of the Declaration of Independence. Then and there did we pledge ourselves to the great truth that all men are equal in rights. And now a Senator from Georgia rises on this floor and denies it. He denies it by a subtilty. While pretending to admit it, he would overthrow it. He would adopt a substitute for equality.

. . . . . .

MR. HILL. With the permission of the Senator, I will ask him if this proposition does not involve on the part of this Government an inhibition upon railroad companies of first, second, and third class cars?

MR. SUMNER. Not at all. That is simply a matter of price. My bill is an inhibition upon inequality founded upon color. I had thought that all those inequalities were buried under the tree at Appomattox, but the Senator digs them up and brings them into this Chamber. There never can be an end to this discussion until all men are assured in equal rights. . . . .

MR. HILL. . . . . I do not know, that, among the guests that the Senator entertains of the colored race, he is visited so often by the humble as I myself am. I think those who call upon him are gentlemen of title and of some distinction; they may be Lieutenant-Governors, members of the two Houses here, members of State Legislatures, &c. My associations have been more with the lower strata of the colored people than with the upper.

MR. SUMNER. Mr. President, there is no personal question between the Senator and myself—

MR. HILL. None whatever.

MR. SUMNER. He proclaims his relations with the colored race. I say nothing of mine; I leave that to others. But the Senator still insists upon his dogma of inequality. Senators have heard him again and again, how he comes round by a vicious

circle to the same point, that an equivalent is equality; and when I mention the case of Governor Dunn travelling from New Orleans to Washington on public business, I understand the Senator to say that on the cars he should enjoy a different treatment from the Governor.

MR. HILL. No, Sir; I have distinctly disclaimed that. When he pays his money, he is entitled to as much comfort and as much convenience as I am.

MR. SUMNER. Let me ask the Senator whether in this world personal respect is not an element of comfort. If a person is treated with indignity, can he be comfortable?

MR. HILL. I will answer the Senator, that no one can condemn more strongly than I do any indignity visited upon a person merely because of color.

MR. SUMNER. But when you exclude persons from the comforts of travel simply on account of color, do you not offer them an indignity?

MR. HILL. I say it is the fault of the railroad companies, if they do not provide comforts for all their passengers, and make them equal where they pay equal fare.

MR. SUMNER. The Senator says it is the fault of the railroad company. I propose to make it impossible for the railroad company to offer an indignity to a colored man more than to the Senator from Georgia.

MR. HILL. Right there the Senator and I divide upon this question. . . . . I confess to having a little *penchant* for the white race; and if I were going on a long journey, and desired a companion, I should prefer to select him from my own race.

MR. SUMNER. The Senator comes round again to his taste. It is not according to his taste; and therefore he offers an indignity to the colored man.

MR. HILL. No, Sir.

MR. SUMNER. It is not according to his taste; that is all. How often shall I say that this is no question of taste, — it is no

question of society, — it is a stern, austere, hard question of rights? And that is the way that I present it to the Senate.

. . . . . .

In old days, when Slavery was arraigned, the constant inquiry of those who represented this wrong was, "Are you willing to associate with colored persons? Will you take these slaves, as equals, into your families?" Sir, was there ever a more illogical inquiry? What has that to do with the question? A claim of rights cannot be encountered by any social point. I may have whom I please as friend, acquaintance, associate, and so may the Senator; but I cannot deny any human being, the humblest, any right of equality. He must be equal with me before the law, or the promises of the Declaration of Independence are not yet fulfilled.

And now, Sir, I pledge myself, so long as strength remains in me, to press this question to a successful end I will not see the colored race of this Republic treated with indignity on the grounds assigned by the Senator. I am their defender. The Senator may deride me, and may represent me as giving too much time to what he calls a very small question. Sir, no question of human rights is small. Every question by which the equal rights of all are affected is transcendent. It cannot be magnified. But here are the rights of a whole people, not merely the rights of an individual, of two or three or four, but the rights of a race, recognized as citizens, voting, helping to place the Senator here in this Chamber, and he turns upon them and denies them.

MR. HILL. The Senator is not aware of one fact, ... that every colored member of the Legislature of my State, even though some of them had made voluntary pledges to me, voted against my election to this body. I was not sent here receiving a single vote from that class of men in the Legislature.

MR. SUMNER. I am afraid that they understood the Senator, [*Laughter.*]

MR. HILL. That may be, Sir. I would not be surprised, if they had some distrust. [*Laughter.*]

MR. SUMNER. And now, Mr. President, that we may understand precisely where we are, that the Senate need not be confused by the question of taste or the question of society presented by the Senator from Georgia, I desire to have my amendment read.

The Supplementary Civil Rights Bill was then read at length, as follows : —

SEC. — That all citizens of the United States, without distinction of race, color, or previous condition of servitude, are entitled to the equal and impartial enjoyment of any accommodation, advantage, facility, or privilege furnished by common carriers, whether on land or water ; by inn-keepers; by licensed owners, managers, or lessees of theatres or other places of public amusement; by trustees, commissioners, superintendents, teachers, or other officers of common schools and other public institutions of learning, the same being supported or authorized by law ; by trustees or officers of church organizations, cemetery associations, and benevolent institutions incorporated by National or State authority: and this right shall not be denied or abridged on any pretence of race, color, or previous condition of servitude.

SEC. — That any person violating the foregoing provision, or aiding in its violation, or inciting thereto, shall for every such offence forfeit and pay the sum of $500 to the person aggrieved thereby, to be recovered in an action on the case, with full costs and such allowance for counsel fees as the court shall deem just, and shall also for every such offence be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $500 nor more than $1,000, and shall be imprisoned not less than thirty days nor more than one year; and any corporation, association, or individual holding a charter or license under National or State authority, violating the aforesaid provision, shall, upon conviction thereof, forfeit such charter or license; and any person assuming to use or continuing to act under such charter or license thus forfeited, or aiding in the same, or inciting thereto, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be fined not less than $1,000 nor more than $5,000, and shall be imprisoned not less than three nor more than seven years; and both the corporate and joint property of such corporation or association, and the private property of the several individuals composing the same, shall be held liable for the forfeitures, fines, and penalties incurred by any violation of the —— section of this Act.

SEC. — That the same jurisdiction and powers are hereby conferred and the same duties enjoined upon the courts and officers of the United States, in the execution of this Act, as are conferred and enjoined upon such courts and officers in sections three, four, five, seven, and ten of an Act entitled "An Act to protect all persons in the United States in their civil rights, and furnish the means of their vindication," passed April 9, 1866, and these sections are hereby made a part of this Act; and any of the aforesaid officers failing to institute and prosecute such proceedings herein required shall for every such offence forfeit and pay the sum of $500 to the person aggrieved thereby, to be recovered by an action on the case, with full costs and such allowance for counsel fees as the court shall deem just, and shall on convic-

tion thereof be deemed guilty of a misdemeanor, and be fined not less than $1,000 nor more than $5,000.

SEC. — That no person shall be disqualified for service as juror in any court, National or State, by reason of race, color, or previous condition of servitude: *Provided*, That such person possesses all other qualifications which are by law prescribed; and any officer or other persons charged with any duty in the selection or summoning of jurors, who shall exclude or fail to summon any person for the reason above named, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not less than $1,000 nor more than $5,000.

SEC. — That every law, statute, ordinance, regulation, or custom, whether National or State, inconsistent with this Act, or making any discriminations against any person on account of color, by the use of the word "white," is hereby repealed and annulled.

SEC. — That it shall be the duty of the judges of the several courts upon which jurisdiction is hereby conferred to give this Act in charge to the grand jury of their respective courts at the commencement of each term thereof.

Objection was at once raised to the admission of any amendment whatever, as imperilling the pending bill, — Mr. Alcorn, of Mississippi, while pressing this, objected further, urging the hazard to the measure embraced in the proposed amendment from attachment to a bill requiring for its passage a two-thirds' vote instead of the usual simple majority.

December 21st, Mr. Thurman, of Ohio, objected to the amendment of Mr. Sumner, on the ground suggested by Mr. Alcorn, — raising the point of order, that, "being a measure which, if it stood by itself, could be passed by a majority vote of the Senate, it cannot be offered as an amendment to a bill that requires two-thirds of the Senate." The objection being overruled, and Mr. Thurman appealing from the decision of the Chair, a debate ensued on the question of order, — Mr. Thurman, Mr. Bayard of Delaware, Mr. Trumbull of Illinois, Mr. Davis of Kentucky, and Mr. Sawyer of South Carolina sustaining the objection, and Mr. Conkling of New York, Mr. Carpenter of Wisconsin, Mr. Edmunds of Vermont, and Mr. Sumner opposing it. In the course of his speech Mr. Sumner remarked: —

DOES not the Act before us in its body propose a measure of reconciliation? Clemency and amnesty it proposes; and these, in my judgment, constitute a measure of reconciliation. And now I add justice to the col-

ored race. Is not that germane? Do not the two go together? Are they not naturally associated? Sir, can they be separated?

Instead of raising a question of order, I think the friends of amnesty would be much better employed if they devoted their strength to secure the passage of my amendment. Who that is truly in favor of amnesty will vote against this measure of reconciliation?

Sir, most anxiously do I seek reconciliation; but I know too much of history, too much of my own country, and I remember too well the fires over which we have walked in these latter days, not to know that reconciliation is impossible except on the recognition of Equal Rights. Vain is the effort of the Senator from Mississippi [Mr. ALCORN]; he cannot succeed; he must fail, and he ought to fail. It is not enough to be generous; he must learn to be just. It is not enough to stand by those who have fought against us; he must also stand by those who for generations have borne the ban of wrong. I listened with sadness to the Senator; he spoke earnestly and sincerely, — but, to my mind, it is much to be regretted, that, coming into this Chamber the representative of colored men, he should turn against them. I know that he will say, "Pass the Amnesty Bill first, and then take care of the other." I say, Better pass the two together; or if either is lost, let it be the first. Justice in this world is foremost.

The Senator thinks that the cause of the colored race is hazarded because my amendment is moved on the Act for Amnesty. In my judgment, it is advanced. He says that the Act of Amnesty can pass only by a two-thirds vote. Well, Sir, I insist that every one of that two-thirds should record his name for my measure

of reconciliation. If he does not, he is inconsistent with himself. How, Sir, will an Act of Amnesty be received when accompanied with denial of justice to the colored race? With what countenance can it be presented to this country? How will it look to the civilized world? Sad page! The Recording Angel will have tears, but not enough to blot it out.

The decision of the Chair was sustained by the vote of the Senate, — Yeas 28, Nays 26, — and the amendment was declared in order. On the question of its adoption it was lost, — Yeas 29, Nays 30.

Later in the day, the Amnesty Bill having been reported to the Senate, Mr. Sumner renewed his amendment. In the debate that ensued he declared his desire to vote for amnesty; but he insisted that this measure did not deserve success, unless with it was justice to the colored race. In reply to Mr. Thurman, he urged that all regulations of public institutions should be in conformity with the Declaration of Independence. "The Senator may smile, but I commend that to his thoughts during our vacation. Let him consider the binding character of the Declaration in its fundamental principles. The Senator does not believe it. There are others who do, and my bill is simply a practical application of it."

Without taking any vote the Senate adjourned for the holiday recess, leaving the Amnesty Bill and the pending amendment as unfinished business.

January 15, 1872, the subject was resumed, when Mr. Sumner made the following speech.

SPEECH.

MR. PRESIDENT, — In opening this question, one of the greatest ever presented to the Senate, I have had but one hesitation, and that was merely with regard to the order of treatment. There is a mass of important testimony from all parts of the country, from Massachusetts as well as Georgia, showing the absolute necessity of Congressional legislation for the protection of Equal Rights, which I think ought to be laid before the Senate. It was my purpose to begin with this testimony; but I have changed my mind, and shall devote the day to a statement of the question, relying upon the indulgence of the Senate for another opportunity to introduce the evidence. I ask that the pending amendment be read.

The Chief Clerk read the amendment, which was to append to the Amnesty Bill, as additional sections, the Supplementary Civil Rights Bill.

Mr. Sumner resumed: —

Mr. President, Slavery, in its foremost pretensions, reappears in the present debate. Again the barbarous tyranny stalks into this Chamber, denying to a whole race the Equal Rights promised by a just citizenship. Some have thought Slavery dead. This is a mistake. If not in body, at least in spirit, or as a ghost making

the country hideous, the ancient criminal yet lingers among us, insisting upon the continued degradation of a race.

Property in man has ceased to exist. The human auction-block has departed. No human being can call himself master, with impious power to separate husband and wife, to sell child from parent, to shut out the opportunities of religion, to close the gates of knowledge, and to rob another of his labor and all its fruits. These guilty prerogatives are ended. To this extent the slave is free. No longer a chattel, he is a man, — justly entitled to all that is accorded by law to any other man.

Such is the irresistible logic of his emancipation. Ceasing to be a slave, he became a man, whose foremost right is Equality of Rights. And yet Slavery has been strong enough to postpone his entry into the great possession. Cruelly, he was not permitted to testify in court; most unjustly, he was not allowed to vote. More than four millions of people, whose only offence was a skin once the badge of Slavery, were shut out from the court-room, and also from the ballot-box, in open defiance of the great Declaration of our fathers, that all men are equal in rights, and that just government stands only on the consent of the governed. Such was the impudent behest of Slavery, prolonged after it was reported dead. At last these crying wrongs are overturned. The slave testifies; the slave votes. To this extent his equality is recognized.

EQUALITY BEFORE THE LAW.

But this is not enough. Much as it may seem, compared with the past, when all was denied, it is too little,

because all is not yet recognized. The denial of any right is a wrong darkening the enjoyment of all the rest. Besides the right to testify and the right to vote, there are other rights without which Equality does not exist. The precise rule is Equality before the Law, nor more nor less; that is, that condition before the law in which all are alike, — being entitled, without discrimination, to the equal enjoyment of all institutions, privileges, advantages, and conveniences created or regulated by law, among which are the right to testify and the right to vote. But this plain requirement is not satisfied, logically or reasonably, by these two concessions, so that when they are recognized all others are trifles. The court-house and the ballot-box are not the only places for the rule. These two are not the only institutions for its operation. The rule is general; how, then, restrict it to two cases? It is, *All are equal before the law,* — not merely before the law in two cases, but before the law in all cases, without limitation or exception. Important as it is to testify and to vote, life is not all contained even in these possessions.

The new-made citizen is called to travel for business, for health, or for pleasure; but here his trials begin. His money, whether gold or paper, is the same as the white man's; but the doors of the public hotel, which from the earliest days of jurisprudence have always opened hospitably to the stranger, close against him, and the public conveyances, which the Common Law declares equally free to all alike, have no such freedom for him. He longs, perhaps, for respite and relaxation at some place of public amusement, duly licensed by law; and here also the same adverse discrimination is made. With the anxieties of a parent, seeking the

welfare of his child, he strives to bestow upon him the inestimable blessings of education, and takes him affectionately to the common school, created by law, and supported by the taxation to which he has contributed; but these doors slam rudely in the face of the child where is garnered up the parent's heart. "Suffer little children, and forbid them not, to come unto me": such were the words of the Divine Master. But among us little children are turned away and forbidden at the door of the common school, because of the skin. And the same insulting ostracism shows itself in other institutions of science and learning, also in the church, and in the last resting-place on earth.

Two instances occur, which have been mentioned already on this floor; but their eminence in illustration of an unquestionable grievance justifies the repetition.

CASE OF FREDERICK DOUGLASS.

ONE is the well-known case of Frederick Douglass, who, returning home after earnest service of weeks as Secretary of the Commission to report on the people of San Domingo and the expediency of incorporating them with the United States, was rudely excluded from the table, where his brother commissioners were already seated, on board the mail-steamer of the Potomac, just before reaching the President, whose commission he bore. This case, if not aggravated, is made conspicuous by peculiar circumstances. Mr. Douglass is a gentleman of unquestioned ability and character, remarkable as an orator, refined in manners, and personally agreeable. He was returning, charged with the mission of bringing under our institutions a considerable popula-

tion of colored foreigners, whose prospective treatment among us was foreshadowed on board that mail-steamer. The Dominican Baez could not expect more than our fellow-citizen. And yet, with this mission, and with the personal recommendation he so justly enjoys, this returning Secretary could not be saved from outrage even in sight of the Executive Mansion.

CASE OF LIEUTENANT-GOVERNOR DUNN.

THERE also was Oscar James Dunn, late Lieutenant-Governor of Louisiana. It was my privilege to open the door of the Senate Chamber and introduce him upon this floor. Then, in reply to my inquiry, he recounted the hardships to which he had been exposed in the long journey from Louisiana, — especially how he was denied the ordinary accommodations for comfort and repose supplied to those of another skin. This denial is memorable, not only from the rank, but the character of the victim. Of blameless life, he was an example of integrity. He was poor, but could not be bought or bribed. Duty with him was more than riches. A fortune was offered for his signature; but he spurned the temptation.

And yet this model character, high in the confidence of his fellow-citizens, and in the full enjoyment of political power, was doomed to suffer the blasting influence which still finds support in this Chamber. He is dead at last, and buried with official pomp. The people, counted by tens of thousands, thronged the streets while his obsequies proceeded. An odious discrimination was for the time suspended. In life rejected by the conductor of a railway because of his skin, he was borne to his

last resting-place with all the honors an afflicted community could bestow. Only in his coffin was the ban of color lifted, and the dead statesman admitted to that equality which is the right of all.

REQUIREMENT OF REPUBLICAN INSTITUTIONS.

THESE are marked instances; but they are types. If Frederick Douglass and Oscar James Dunn could be made to suffer, how much must others be called to endure! All alike, the feeble, the invalid, the educated, the refined, women as well as men, are shut out from the ordinary privileges of the steamboat or rail-car, and driven into a vulgar sty with smokers and rude persons, where the conversation is as offensive as the scene, and then again at the roadside inn are denied that shelter and nourishment without which travel is impossible. Do you doubt this constant, wide-spread outrage, extending in uncounted ramifications throughout the whole land? With sorrow be it said, it reaches everywhere, even into Massachusetts. Not a State which does not need the benign correction. The evidence is on your table in numerous petitions. And there is other evidence, already presented by me, showing how individuals have suffered from this plain denial of equal rights. Who that has a heart can listen to the story without indignation and shame? Who with a spark of justice to illumine his soul can hesitate to denounce the wrong? Who that rejoices in republican institutions will not help to overthrow the tyranny by which they are degraded?

I do not use too strong language, when I expose this tyranny as a degradation to republican institutions,—ay,

Sir, in their fundamental principle. Why is the Declaration of Independence our Magna Charta? Not because it declares separation from a distant kingly power; but because it announces the lofty truth that all are equal in rights, and, as a natural consequence, that just government stands only on the consent of the governed, — all of which is held to be self-evident. Such is the soul of republican institutions, without which the Republic is a failure, a name and nothing more. Call it a Republic, if you will, but it is in reality a soulless mockery.

Equality in rights is not only the first of rights, it is an axiom of political truth. But an axiom, whether of science or philosophy, is universal, and without exception or limitation; and this is according to the very law of its nature. Therefore it is not stating an axiom to announce grandly that only white men are equal in rights; nor is it stating an axiom to announce with the same grandeur that all persons are equal in rights, but that colored persons have no rights except to testify and vote. Nor is it a self-evident truth, as declared; for no truth is self-evident which is not universal. The asserted limitation destroys the original Declaration, making it a ridiculous sham, instead of that sublime Magna Charta before which kings, nobles, and all inequalities of birth must disappear as ghosts of night at the dawn.

REAL ISSUE OF THE WAR.

All this has additional force, when it is known that this very axiom or self-evident truth declared by our fathers was the real issue of the war, and was so publicly announced by the leaders on both sides. Behind the embattled armies were ideas, and the idea on our

side was Equality in Rights, which on the other side was denied. The Nation insisted that all men are created equal; the Rebellion insisted that all men are created unequal. Here the evidence is explicit.

The inequality of men was an original postulate of Mr. Calhoun,[1] which found final expression in the open denunciation of the self-evident truth as "a self-evident lie."[2] Echoing this denunciation, Jefferson Davis, on leaving the Senate, January 21, 1861, in that farewell speech which some among you heard, but which all may read in the "Globe," made the issue in these words:—

"It has been a belief that we are to be deprived in the Union of the rights which our fathers bequeathed to us, which has brought Mississippi into her present decision. *She has heard proclaimed the theory that all men are created free and equal, and this made the basis of an attack upon her social institutions; and the sacred Declaration of Independence has been invoked to maintain the position of the equality of the races.*"[3]

The issue thus made by the chief Rebel was promptly joined. Abraham Lincoln, the elected President, stopping at Independence Hall, February 22d, on his way to assume his duties at the National capital, in unpremeditated words thus interpreted the Declaration:—

"It was that which gave promise that in due time the weight should be lifted from the shoulders of all men, *and that all should have an equal chance.*"

[1] Speech in the Senate, on the Oregon Bill, June 27, 1848: Speeches, Vol. IV. pp. 507–12.

[2] Speech of Mr. Pettit, of Indiana, in the Senate, on the Nebraska and Kansas Bill, February 20, 1854: Congressional Globe, 33d Cong. 1st Sess., p. 214.

[3] Congressional Globe, 36th Cong. 2d Sess., p. 487.

Mark, if you please, the simplicity of this utterance. All are to have "an equal chance"; and this, he said, "is the sentiment embodied in the Declaration of Independence." Then, in reply to Jefferson Davis, he proceeded: —

"Now, my friends, can this country be saved upon that basis? If it can, I shall consider myself one of the happiest men in the world, if I can help to save it. If it cannot be saved upon that principle, it will be truly awful. But if this country cannot be saved without giving up that principle, I was about to say I would rather be assassinated on this spot than surrender it."

Giving these words still further solemnity, he added:

"I have said nothing but what I am willing to live by, and, if it be the pleasure of Almighty God, to die by."

And then, before raising the national banner over the historic Hall, he said: —

"It is on such an occasion as this that we can reason together, and reaffirm our devotion to the country and the principles of the Declaration of Independence."[1]

Thus the gauntlet flung down by Jefferson Davis was taken up by Abraham Lincoln, who never forgot the issue.

The rejoinder was made by Alexander H. Stephens, Vice-President of the Rebellion, in a not-to-be forgotten speech at Savannah, March 21, 1861, when he did not hesitate to declare of the pretended Government, that —

"Its foundations are laid, its corner-stone rests, upon *the great truth that the Negro is not equal to the white man.*"

[1] Crosby's Life of Lincoln, (Philadelphia, 1865,) pp. 86, 87. Philadelphia Inquirer, February 23, 1861.

Then, glorying in this terrible shame, he added: —

"This, our new Government, is the first, in the history of the world, based upon this great physical, philosophical, and moral truth."

"This stone, which was rejected by the first builders, is become the chief stone of the corner."[1]

To this unblushing avowal Abraham Lincoln replied in that marvellous, undying utterance at Gettysburg, — fit voice for the Republic, greater far than any victory:

"Fourscore and seven years ago our fathers brought forth on this continent a new Nation, *conceived in Liberty, and dedicated to the proposition that all men are created equal.*"

Thus, in precise conformity with the Declaration, was it announced that our Republic is dedicated to the Equal Rights of All; and then the prophet-President, soon to be a martyr, asked his countrymen to dedicate themselves to the great task remaining, highly resolving

"that this Nation, under God, shall have a new birth of Freedom; and that Government of the people, by the people, and for the people shall not perish from the earth."[2]

The victory of the war is vain without the grander victory through which the Republic is dedicated to the axiomatic, self-evident truth declared by our fathers, and reasserted by Abraham Lincoln. With this mighty truth as a guiding principle, the National Constitution is elevated, and made more than ever a protection to the citizen.

[1] Rebellion Record, Vol. I., Documents, pp. 45, 46.

[2] Address at the Consecration of the National Cemetery at Gettysburg, November 19, 1863. — "Copied from the original." Arnold's History of Abraham Lincoln and the Overthrow of Slavery, (Chicago, 1866,) pp. 423-46.

All this is so plain that it is difficult to argue it. What is the Republic, if it fails in this loyalty? What is the National Government, coextensive with the Republic, if fellow-citizens, counted by the million, can be shut out from equal rights in travel, in recreation, in education, and in other things, all contributing to human necessities? Where is that great promise by which "the pursuit of happiness" is placed, with life and liberty, under the safeguard of axiomatic, self-evident truth? Where is justice, if this ban of color is not promptly removed? Where is humanity? Where is reason?

TWO EXCUSES.

THE two excuses show how irrational and utterly groundless is this pretension. They are on a par with the pretension itself. One is, that the question is of society, and not of rights, which is clearly a misrepresentation; and the other is, that the separate arrangements provided for colored persons constitute a substitute for equality in the nature of an equivalent, — all of which is clearly a contrivance, if not a trick: as if there could be any equivalent for equality.

NO QUESTION OF SOCIETY.

OF the first excuse it is difficult to speak with patience. It is a simple misrepresentation, and wherever it shows itself must be treated as such. There is no colored person who does not resent the imputation that he is seeking to intrude himself socially anywhere. This is no question of society, no question of social life, no question of social equality, if anybody knows what

this means. The object is simply Equality before the Law, a term which explains itself. Now, as the law does not presume to create or regulate social relations, these are in no respect affected by the pending measure. Each person, whether Senator or citizen, is always free to choose who shall be his friend, his associate, his guest. And does not the ancient proverb declare that "a man is known by the company he keeps"? But this assumes that he may choose for himself. His house is his "castle"; and this very designation, borrowed from the Common Law, shows his absolute independence within its walls; nor is there any difference, whether it be palace or hovel. But when he leaves his "castle" and goes abroad, this independence is at an end. He walks the streets, but always subject to the prevailing law of Equality; nor can he appropriate the sidewalk to his own exclusive use, driving into the gutter all whose skin is less white than his own. But nobody pretends that Equality in the highway, whether on pavement or sidewalk, is a question of society. And permit me to say that Equality in all institutions created or regulated by law is as little a question of society.

In the days of Slavery it was an oft-repeated charge, that Emancipation was a measure of social equality; and the same charge became a cry at the successive efforts for the right to testify and the right to vote. At each stage the cry was raised, and now it makes itself heard again, as you are called to assure this crowning safeguard.

EQUALITY NOT FOUND IN EQUIVALENTS.

THEN comes the other excuse, which finds Equality in separation. Separate hotels, separate conveyances, separate theatres, separate schools and institutions of learning and science, separate churches, and separate cemeteries, — these are the artificial substitutes. And this is the contrivance by which a transcendent right, involving a transcendent duty, is evaded: for Equality is not only a right, but a duty.

How vain to argue that there is no denial of Equal Rights when this separation is enforced! The substitute is invariably an inferior article. Does any Senator deny it? Therefore, it is not Equality; at best it is an equivalent only. But no equivalent is Equality. Separation implies one thing for a white person and another thing for a colored person; but Equality is where all have the same alike. There can be no substitute for Equality, — nothing but itself. Even if accommodations are the same, as notoriously they are not, there is no Equality. In the process of substitution the vital elixir exhales and escapes: it is lost, and cannot be recovered; for Equality is found only in Equality. "Nought but itself can be its parallel"; but Senators undertake to find parallels in other things.

As well make weight in silver the equivalent for weight in diamonds, according to the illustration of Selden in his famous "Table-Talk." "If," remarked the learned interlocutor, "I said I owed you twenty pounds in silver, and you said I owed you twenty pounds of diamonds, which is a sum innumerable, 't is impossible we should ever agree."[1] But Equality is weight in

[1] Table-Talk; *The King.*

diamonds, and a sum innumerable, — which is very different from weight in silver.

Assuming — what is most absurd to assume, and what is contradicted by all experience — that a substitute can be an equivalent, it is so in form only, and not in reality. Every such assumption is an indignity to the colored race, instinct with the spirit of Slavery; and this decides its character. It is Slavery in its last appearance. Are you ready to prolong the hateful tyranny? Religion and reason condemn Caste as impious and unchristian, making republican institutions and equal laws impossible; but here is Caste not unlike that which separates the Sudra from the Brahmin. Pray, Sir, who constitutes the white man a Brahmin? Whence his lordly title? Down to a recent period in Europe the Jews were driven to herd by themselves, separate from the Christians; but this discarded barbarism is revived among us in the ban of color. There are millions of fellow-citizens guilty of no offence except the dusky livery of the sun appointed by the Heavenly Father, whom you treat as others have treated the Jews, as the Brahmin treats the Sudra. But, pray, Sir, do not pretend that this is the great equality promised by our fathers.

In arraigning this attempt at separation as a Caste, I say nothing new. For years I have denounced it as such; and here I followed good authorities, as well as reason. Alexander von Humboldt, speaking of the negroes of New Mexico when Slavery prevailed, called them a Caste.[1] A recent political and juridical writer of France uses the same term to denote not only the discrimination in India, but that in our own country, —

[1] Essai Politique sur le Royaume de La Nouvelle Espagne, Liv. II. ch. 6.

especially referring to the exclusion of colored children from the common schools as among "the humiliating and brutal distinctions" by which their Caste is characterized.[1] The principle of separation on the ground of hereditary inferiority is the distinctive essence of Caste; but this is the outrage which flaunts in our country, crying out, "I am better than thou, because I am white. Get away!"

THE REMEDY.

THUS do I reject the two excuses. But I do not leave the cause here. I go further, and show how consistent is the pending measure with acknowledged principles, illustrated by undoubted law.

The bill for Equal Rights is simply supplementary to the existing Civil Rights Law, which is one of our great statutes of peace, and it stands on the same requirements of the National Constitution. If the Civil Rights Law is above question, as cannot be doubted, then also is this supplementary amendment; for it is only the complement of the other, and necessary to its completion. Without this amendment the original law is imperfect. It cannot be said, according to its title, that all persons are protected in their civil rights, so long as the outrages I expose continue to exist; nor is Slavery entirely dead.

Following reason and authority, the conclusion is easy. A Law Dictionary, of constant use as a repertory of established rules and principles, defines a "freeman" as "one in the possession of *the civil rights* enjoyed by the people generally."[2] Happily, all are freemen now;

[1] Charles Comte, Traité de Législation, Tom. IV., pp. 129, 445.
[2] Bouvier, Law Dictionary, (3d edit.,) art. FREEMAN.

but the colored people are still excluded from civil rights enjoyed by the people generally, — and this, too, in the face of our new Bill of Rights intended for their especial protection.

By the Constitutional Amendment abolishing Slavery Congress is empowered "to enforce this article by appropriate legislation"; and in pursuance thereof the Civil Rights Law was enacted. That measure was justly accepted as "appropriate legislation. Without it Slavery would still exist in at least one of its most odious pretensions. By the Civil Rights Law colored persons were assured in the right to testify, which in most of the States was denied or abridged. So closely was this outrage connected with Slavery, that it was, indeed, part of this great wrong. Therefore its prohibition was "appropriate legislation" in the enforcement of the Constitutional Amendment. But the denial or abridgment of Equality on account of color is also part of Slavery. So long as it exists, Slavery is still present among us. Its prohibition is not only "appropriate," but necessary, to enforce the Constitutional Amendment. Therefore is it strictly Constitutional, as if in the very text of the National Constitution.

The next Constitutional Amendment, known as the Fourteenth, contains two different provisions, which augment the power of Congress. The first furnishes the definition of "citizen," which down to this time had been left to construction only: —

"*All persons* born or naturalized in the United States, and subject to the jurisdiction thereof, are *citizens* of the United States, and of the States wherever they reside."

Here, you will remark, are no words of race or color.

"*All* persons," and not "*all white* persons," born or naturalized in the United States, and subject to the jurisdiction thereof, are "citizens." Such is the definition supplied by this Amendment. This is followed by another provision in aid of the definition: —

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, *nor deny to any person within its jurisdiction the equal protection of the laws.*"

And Congress is empowered to enforce this definition of Citizenship and this guaranty, by "appropriate legislation."

Here, then, are two Constitutional Amendments, each a fountain of power: the first, to enforce the Abolition of Slavery; and the second, to assure the privileges and immunities of citizens, and also the equal protection of the laws. If the Supplementary Civil Rights Bill, moved by me, is not within these accumulated powers, I am at a loss to know what is within those powers.

In considering these Constitutional provisions, I insist upon that interpretation which shall give them the most generous expansion, so that they shall be truly efficacious for human rights. Once Slavery was the animating principle in determining the meaning of the National Constitution: happily, it is so no longer. Another principle is now supreme, breathing into the whole the breath of a new life, and filling it in every part with one pervading, controlling sentiment, — being that great principle of Equality which triumphed at last on the battle-field, and, bearing the watchword of the Republic, now supplies the rule by which every word of

the Constitution and all its parts must be interpreted, as much as if written in its text.

There is also an original provision of the National Constitution, not to be forgotten: —

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Once a sterile letter, this is now a fruitful safeguard, to be interpreted, like all else, so that human rights shall most prevail. The term "privileges and immunities" was at an early day authoritatively defined by Judge Washington, who announced that they embraced "protection by the Government, the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and *to pursue and obtain happiness and safety*, ... the right of a citizen of one State to pass through or to reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise."[1] But these "privileges and immunities" are protected by the present measure.

No doubt the Supplementary Law must operate, not only in National jurisdiction, but also in the States, precisely as the Civil Rights Law; otherwise it will be of little value. Its sphere must be coextensive with the Republic, making the rights of the citizen uniform everywhere. But this can be only by one uniform safeguard sustained by the Nation. Citizenship is universal, and the same everywhere. It cannot be more or less in one State than in another.

But legislation is not enough. An enlightened public opinion must be invoked. Nor will this be wanting. The country will rally in aid of the law, more especially

[1] Corfield *v.* Coryell, 4 Washington, C. C. R., 381.

since it is a measure of justice and humanity. The law is needed now as a help to public opinion. It is needed by the very people whose present conduct makes occasion for it. Prompted by the law, leaning on the law, they will recognize the equal rights of all; nor do I despair of a public opinion which shall stamp the denial of these rights as an outrage not unlike Slavery itself. Custom and patronage will then be sought in obeying the law. People generally are little better than actors, for whom it was once said: —

> "Ah, let not Censure term our fate our choice:
> The stage but echoes back the public voice;
> The drama's laws the drama's patrons give;
> For we that live to please must please to live." [1]

In the absence of the law people please too often by inhumanity, but with the law teaching the lesson of duty they will please by humanity. Thus will the law be an instrument of improvement, necessary in precise proportion to existing prejudice. Because people still please by inhumanity, therefore must there be a counteracting force. This precise exigency was foreseen by Rousseau, remarkable as writer and thinker, in a work which startled the world, when he said: —

> "It is precisely because the force of things tends always to destroy equality that the force of legislation should always tend to maintain it." [2]

Never was a truer proposition; and now let us look at the cases for its application.

[1] Johnson: Prologue spoken by Mr. Garrick at the opening of the Theatre Royal, Drury Lane, 1747.

[2] Du Contrat Social, Liv. II. ch. 11.

PUBLIC HOTELS.

I BEGIN with Public Hotels or Inns, because the rule with regard to them may be traced to the earliest periods of the Common Law. In the Chronicles of Holinshed, written in the reign of Queen Elizabeth, is a chapter "Of our Inns and Thoroughfares," where the inn, which is the original term for hotel, is described as "builded for the receiving of such travellers and strangers as pass to and fro"; and then the chronicler, boasting of his own country as compared with others, says, "*Every man* may use his inn as his own house in England."[1] In conformity with this boast was the law of England. The inn was opened to "every man." And this rule has continued from that early epoch, anterior to the first English settlement of North America, down to this day. The inn is a public institution, with well-known rights and duties. Among the latter is the duty to receive all paying travellers decent in appearance and conduct, — wherein it is distinguished from a lodging-house or boarding-house, which is a private concern, and not subject to the obligations of the inn.

For this statement I might cite authorities beginning with the infancy of the law, and not ending even with a late decision of the Superior Court of New York, where an inn is defined to be "a public house of entertainment *for all who choose to visit it*,"[2] — which differs very little from the descriptive words of Holinshed.

The summary of our great jurist, Judge Story, shows the law: —

[1] Chronicles, (London, 1807,) Vol. I. p. 414: Description of England, Book III. ch. 16.

[2] Wintermute *v.* Clarke, 5 Sandford, R., 247.

"An innkeeper is bound to take in *all travellers and wayfaring persons*, and to entertain them, if he can accommodate them, for a reasonable compensation. . . . . If an innkeeper improperly refuses to receive or provide for a guest, he is liable to be indicted therefor."[1]

Chancellor Kent states the rule briefly, but with fulness and precision: —

"An innkeeper cannot lawfully refuse to receive guests to the extent of his reasonable accommodations; nor can he impose unreasonable terms upon them."[2]

This great authority says again, quoting a decided case: —

"Innkeepers are liable to an action if they refuse to receive a guest without just cause. The innkeeper is even indictable for the refusal, if he has room in his house and the guest behaves properly."[3]

And Professor Parsons, in his work on Contracts, so familiar to lawyers and students, says: —

"He cannot so refuse, unless his house is full and he is actually unable to receive him. And if on false pretences he refuses, he is liable to an action."[4]

The importance of this rule in determining present duty will justify another statement in the language of a popular Encyclopædia: —

"One of the incidents of an innkeeper is, that *he is bound to open his house to all travellers, without distinction, and has no option to refuse such refreshment, shelter, and accommodation as he possesses*, provided the person who applies is of the de-

[1] Law of Bailments, § 476.
[2] 2 Commentaries, 592, note.
[3] 2 Commentaries, 597, note.
[4] 2 Law of Contracts, 150.

scription of a traveller, and able and ready to pay the customary hire, and is not drunk or disorderly or tainted with infectious disease."

And the Encyclopædia adds: —

"As some compensation for this *compulsory hospitality*, the innkeeper is allowed certain privileges." [1]

Thus is the innkeeper under constraint of law, which he must obey; "bound to take in all travellers and wayfaring persons"; "nor can he impose unreasonable terms upon them"; and liable to an action, and even to an indictment, for refusal. Such is the law.

With this peremptory rule opening the doors of inns to all travellers, without distinction, to the extent of authorizing not only an action, but an indictment, for the refusal to receive a traveller, it is plain that the pending bill is only declaratory of existing law, giving to it the sanction of Congress.

PUBLIC CONVEYANCES.

PUBLIC CONVEYANCES, whether on land or water, are known to the law as common carriers, and they, too, have obligations, not unlike those of inns. Common carriers are grouped with innkeepers, especially in duty to passengers. Here again the learned Judge is our authority: —

"The first and most general obligation on their part is to carry passengers, whenever they offer themselves and are ready to pay for their transportation. *This results from their setting themselves up, like innkeepers and common carriers of goods, for a common public employment, on hire.* They are no

[1] Chambers's Encyclopædia, art. INN and INNKEEPER.

more at liberty to refuse a passenger, if they have sufficient room and accommodation, than an innkeeper is to refuse suitable room and accommodations to a guest."[1]

Professor Parsons states the rule strongly:—

"It is his duty to receive *all passengers* who offer; to carry them the whole route; to demand no more than the usual and established compensation; *to treat all his passengers alike;* to behave to all with civility and propriety; to provide suitable carriages and means of transport; . . . . and for the default of his servants or agents in any of the above particulars, or generally in any other points of duty, the carrier is directly responsible, *as well as for any circumstance of aggravation which attended the wrong.*"[2]

The same rule, in its application to railroads, has been presented by a learned writer with singular force:—

"The company is under a public duty, as a common carrier of passengers, to receive all who offer themselves as such and are ready to pay the usual fare, and is liable in damages to a party whom it refuses to carry without a reasonable excuse. It may decline to carry persons after its means of conveyance have been exhausted, and refuse such as persist in not complying with its reasonable regulations, or whose improper behaviour — as by their drunkenness, obscene language, or vulgar conduct — renders them an annoyance to other passengers. *But it cannot make unreasonable discriminations between persons soliciting its means of conveyance, as by refusing them on account of personal dislike, their occupation, condition in life,* COMPLEXION, RACE, *nativity, political or ecclesiastical relations.*"[3]

It has also been affirmed by the Supreme Court of

[1] Story, Law of Bailments, § 591.
[2] 2 Law of Contracts, 225-29.
[3] Pierce, American Railroad Law, 489.

Pennsylvania, where, on account of color, a person had been excluded from a street car in Philadelphia.[1]

The pending bill simply reinforces this rule, which, without Congress, ought to be sufficient. But since it is set at nought by an odious discrimination, Congress must interfere.

PLACES OF PUBLIC AMUSEMENT.

THEATRES and other places of Public Amusement, licensed by law, are kindred to inns or public conveyances, though less noticed by jurisprudence. But, like their prototypes, they undertake to provide for the public under sanction of law. They are public institutions, regulated, if not created, by law, enjoying privileges, and in consideration thereof assuming duties, kindred to those of the inn and the public conveyance. From essential reason, the rule should be the same with all. As the inn cannot close its doors, or the public conveyance refuse a seat, to any paying traveller, decent in condition, so must it be with the theatre and other places of public amusement. Here are institutions whose peculiar object is "the pursuit of happiness," which has been placed among the Equal Rights of All. How utterly irrational the pretension to outrage a large portion of the community! The law can lend itself to no such intolerable absurdity; and this, I insist, shall be declared by Congress.

[1] West Chester and Philadelphia Railroad Co. *v.* Miles; 55 Pennsylvania State R., 209 (1867).

COMMON SCHOOLS.

THE Common School falls naturally into the same category. Like the others, it must open to all, or its designation is a misnomer and a mockery. It is not a school for whites, or a school for blacks, but a school for all, — in other words, a common school. Much is implied in this term, according to which the school harmonizes with the other institutions already mentioned. It is an inn where children rest on the road to knowledge. It is a public conveyance where children are passengers. It is a theatre where children resort for enduring recreation. Like the others, it assumes to provide for the public; therefore it must be open to all: nor can there be any exclusion, except on grounds equally applicable to the inn, the public conveyance, and the theatre.

But the common school has a higher character. Its object is the education of the young; and it is sustained by taxation, to which all contribute. Not only does it hold itself out to the public by its name and its harmony with the other institutions, but it assumes the place of parent to all children within its locality, bound always to exercise a parent's watchful care and tenderness, which can know no distinction of child.

It is easy to see that the separate school, founded on an odious discrimination, and sometimes offered as an equivalent for the common school, is an ill-disguised violation of the principle of Equality, while as a pretended equivalent it is an utter failure, and instead of a parent is only a churlish step-mother.

A slight illustration will show how it fails; and here I mention an incident occurring in Washington, but which must repeat itself often on a larger scale, wher-

ever separation is attempted. Colored children, living near what is called the common school, are driven from its doors, and compelled to walk a considerable distance — often troublesome, and in certain conditions of the weather difficult — to attend the separate school. One of these children has suffered from this exposure, and I have myself witnessed the emotion of the parent. This could not have occurred, had the child been received at the common school in the neighborhood. Now it is idle to assert that children compelled to this exceptional journey to and fro are in the enjoyment of Equal Rights. The superadded pedestrianism and its attendant discomfort furnish the measure of Inequality in one of its forms, increased by the weakness or ill-health of the child. What must be the feelings of a colored father or mother daily witnessing this sacrifice to the demon of Caste?

This is an illustration merely, but it shows precisely how impossible it is for a separate school to be the equivalent of the common school. And yet it only touches the evil, without exhibiting its proportions. The indignity offered to the colored child is worse than any compulsory exposure; and here not only the child suffers, but the race to which he belongs is degraded, and the whole community is hardened in wrong.

The separate school wants the first requisite of the common school, inasmuch as it is not equally open to all; and since this is inconsistent with the declared rule of republican institutions, such a school is not republican in character. Therefore it is not a preparation for the duties of life. The child is not trained in the way he should go; for he is trained under the ban of Inequality. How can he grow up to the stature of equal citizenship? He is pinched and dwarfed while the

stigma of color is stamped upon him. This is plain oppression, which you, Sir, would feel keenly, were it directed against you or your child. Surely the race enslaved for generations has suffered enough without being doomed to this prolonged proscription. Will not the Republic, redeemed by most costly sacrifice, insist upon justice to the children of the land, making the common school the benign example of republican institutions, where merit is the only ground of favor?

Nor is separation without evil to the whites. The prejudice of color is nursed, when it should be stifled. The Pharisaism of race becomes an element of character, when, like all other Pharisaisms, it should be cast out. Better even than knowledge is a kindly nature and the sentiment of equality. Such should be the constant lesson, repeated by the lips and inscribed on the heart; but the school itself must practise the lesson. Children learn by example more than by precept. How precious the example which teaches that all are equal in rights! But this can be only where all commingle in the common school as in common citizenship. There is no separate ballot-box: there should be no separate school. It is not enough that all should be taught alike; they must all be taught together. They are not only to receive equal quantities of knowledge; all are to receive it in the same way. But they cannot be taught alike, unless all are taught together; nor can they receive equal quantities of knowledge in the same way, except at the common school.

The common school is important to all; but to the colored child it is a necessity. Excluded from the common school, he finds himself too frequently without any substitute. But even where a separate school is planted,

it is inferior in character, buildings, furniture, books, teachers: all are second-rate. No matter what the temporary disposition, the separate school will not flourish as the common school. It is but an offshoot or sucker, without the strength of the parent stem. That the two must differ is seen at once; and that this difference is adverse to the colored child is equally apparent. For him there is no assurance of education except in the common school, where he will be under the safeguard of all. White parents will take care not only that the common school is not neglected, but that its teachers and means of instruction are the best possible; and the colored child will have the benefit of this watchfulness. This decisive consideration completes the irresistible argument for the common school as the equal parent of all without distinction of color.

If to him that hath is given, according to the way of the world, it is not doubted that to him that hath not there is a positive duty in proportion to the necessity. Unhappily, our colored fellow-citizens are in this condition. But just in proportion as they are weak, and not yet recovered from the degradation in which they have been plunged, does the Republic owe its completest support and protection. Already a component part of our political corporation, they must become part of the educational corporation also, with Equality as the supreme law.

OTHER PUBLIC INSTITUTIONS.

It is with humiliation that I am forced to insist upon the same equality in other public institutions of learning and science, — also in churches, and in the last resting-places of the dead. So far as any of these are public in character and organized by law, they must follow

the general requirement. How strange that any institution of learning or science, any church, or any cemetery should set up a discrimination so utterly inconsistent with correct principle! But I do not forget that only recently a colored officer of the National Army was treated with indignity at the communion-table. To insult the dead is easier, although condemned by Christian precept and heathen example. As in birth, so in death are all alike, — beginning with the same nakedness, and ending in the same decay; nor do worms spare the white body more than the black. This equal lot has been the frequent occasion of sentiment and of poetry. Horace has pictured pallid Death with impartial foot knocking at the cottages of the poor and the towers of kings.[1] In the same spirit the early English poet, author of "Piers Ploughman," shows the lowly and the great in their common house: —

> "For in charnel at chirche
> Cherles ben yvel to knowe,
> Or a knyght from a knave there."[2]

And Chaucer even denies the distinction in life: —

> "But understond in thine entent
> That this is not mine entendement,
> To clepe no wight in no ages
> Onely gentle for his linages:
> Though he be not gentle borne,
> Than maiest well seine this in sooth,
> That he is gentle because he doth
> As longeth to a gentleman."[3]

[1] "Pallida Mors æquo pulsat pede pauperum tabernas,
Regumque turres." — *Carm.* I. iv. 13–14.

[2] This sentiment of Equality appears also in the "Roman de la Rose," an early poem of France, where the bodies of princes are said to be worth no more than that of a ploughman: —

> "Car lor cors ne vault une pomme
> Oultre le cors d'ung charruier." — vv. 18792–3.

[3] Romaunt of the Rose, 2187–97: Poetical Works, ed. Tyrwhitt (London, Moxon, 1843).

This beautiful testimony, to which the honest heart responds, is from an age when humanity was less regarded than now. Plainly it shows how conduct and character are realities, while other things are but accidents.

Among the Romans degradation ended with life. Slaves were admitted to honorable sepulture, and sometimes slept the last sleep with their masters. The slaves of Augustus and Livia were buried on the famous Appian Way, where their tombs with historic inscriptions have survived the centuries.[1] "Bury him with his niggers," was the rude order of the Rebel officer, as he flung the precious remains of our admirable Colonel Shaw into the common trench at Fort Wagner, where he fell, mounting the parapets at the head of colored troops. And so was he buried, lovely in death as in life. The intended insult became an honor. In that common trench the young hero rests, symbolizing the great Equality for which he died. No Roman monument, with its *Siste, viator*, to the passing traveller, no "labor of an age in pilèd stones," can match in grandeur that simple burial.

PREJUDICE OF COLOR.

Mr. President, against these conclusions there is but one argument, which, when considered, is nothing but a prejudice, as little rational as what Shylock first calls his "humor" and then "a lodged hate and a certain loathing," making him seek the pound of flesh nearest the merchant's heart. The prejudice of color pursues its victim in the long pilgrimage from the cradle to the

[1] Smith's Dictionary of Greek and Roman Antiquities, art. Servus.

grave, barring the hotel, excluding from the public conveyance, insulting at the theatre, closing the school, shutting the gates of science, and playing its fantastic tricks even in the church where he kneels and the grave where his dust mingles with the surrounding earth. The God-given color of the African is a constant offence to the disdainful white, who, like the pretentious lord, asking Hotspur for prisoners, can bear nothing so unhandsome "betwixt the wind and his nobility." This is the whole case. And shall those Equal Rights promised by the great Declaration be sacrificed to a prejudice? Shall that Equality before the Law, which is the best part of citizenship, be denied to those who do not happen to be white? Is this a white man's government or is it a government of "all men," as declared by our fathers? Is it a Republic of Equal Laws, or an Oligarchy of the Skin? This is the question now presented.

Once Slavery was justified by color, as now the denial of Equal Rights is justified; and the reason is as little respectable in one case as in the other. The old pretension is curiously illustrated by an incident in the inimitable Autobiography of Franklin. An Ante-revolutionary Governor of Pennsylvania remarked gayly, "that he much admired the idea of Sancho Panza, who, when it was proposed to give him a government, requested it might be a government of *blacks*, as then, if he could not agree with his people, he might sell them"; on which a friend said, "Franklin, why do you continue to side with those damned Quakers? Had you not better sell them?" Franklin answered, "The Governor has not yet *blacked* them enough." The Autobiography proceeds to record, that the Governor "labored hard to *blacken* the Assembly in all his Messages, but they wiped off

his coloring as fast as he laid it on, and placed it in return thick upon his own face, so that, finding he was likely to be *negrofied* himself, he grew tired of the contest and quitted the Government."[1] To negrofy a man was to degrade him.

Thus in the ambition of Sancho Panza, and in the story of the British governor, was color the badge of Slavery. "Then I can sell them," said Sancho Panza; and the British governor repeated the saying. This is changed now; but not entirely. At present nobody dares say, "I can sell them"; but the inn, the common conveyance, the theatre, the school, the scientific institute, the church, and the cemetery deny them the equal rights of Freedom.

Color has its curiosities in history. For generations the Roman circus was convulsed by factions known from their liveries as *white* and *red;* new factions adopted *green* and *blue;* and these latter colors raged with redoubled fury in the hippodrome of Constantinople.[2] Then came *blacks* and *whites,* Neri and Bianchi, in the political contentions of Italy,[3] where the designation was from the accident of a name. In England the most beautiful of flowers, in two of its colors, became the badge of hostile armies, and the white rose fought against the red. But it has been reserved for our Republic, dedicated to the rights of human nature, to adopt the color of the skin as the sign of separation, and to organize it in law.

Color in the animal kingdom is according to the Law of Nature. The ox of the Roman Campagna is gray.

[1] Works, ed. Sparks, Vol. I. p. 180.

[2] Gibbon, Decline and Fall of the Roman Empire, Ch. XL.

[3] Sismondi, History of the Italian Republic, (London, 1832,) p. 115.

The herds on the banks of the Xanthus were yellow; on the banks of the Clitumnus they were white. In Corsica animals are spotted. The various colors of the human family belong to the same mystery. There are white, yellow, red, and black, with intermediate shades; but no matter what their hue, they are always MEN, gifted with a common manhood and entitled to common rights. Dr. Johnson made short work with the famous paradox of Berkeley, denying the existence of matter. Striking his foot with mighty force against a large stone, till he rebounded from it, "I refute it *thus*," he exclaimed.[1] And so, in reply to every pretension against the equal rights of all, to every assertion of right founded on the skin, to every denial of right because a man is something else than white, I point to that common manhood which knows no distinction of color, and thus do I refute the whole inhuman, unchristian paradox.

THE WORD "WHITE."

OBSERVE, if you please, how little the word "white" is authorized to play the great part it performs, and how much of an intruder it is in all its appearances. In those two title-deeds, the Declaration of Independence and the Constitution, there are no words of color, whether white, yellow, red, or black; but here is the fountain out of which all is derived. The Declaration speaks of "all men," and not of "all *white* men"; and the Constitution says, "We the people," and not "We the *white* people." Where, then, is authority for any such discrimination, whether by the nation or any

[1] Boswell's Life of Johnson, (London, 1835,) Vol. II. p. 263.

component part? There is no fountain or word for it. The fountain failing, and the word non-existent, the whole pretension is a disgusting usurpation, which is more utterly irrational when it is considered that authority for such an outrage can be found only in positive words, plain and unambiguous in meaning. This was the rule with regard to Slavery, solemnly declared by Lord Mansfield in the famous Somerset case; and it must be the same with regard to this pretension. It cannot be invented, imagined, or implied; it must be found in the very text: and this I assert according to fixed principles of jurisprudence. In its absence, Equality is "the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."[1]

This conclusion is reinforced by the several Constitutional Amendments; but I prefer to dwell on the original text of the Constitution, in presence of which you might as well undertake to make a king as to degrade a fellow-citizen on account of his skin.

There is also, antedating and interpreting the Constitution, the original Common Law, which knew no distinction of color. One of the greatest judges that ever sat in Westminster Hall, Lord Chief-Justice Holt, declared, in sententious judgment, worthy of perpetual memory, "The Common Law takes no notice of Negroes being different from other men."[2] This was in 1706, seventy years before the Declaration of Independence; so that it was well known to our fathers as part of that Common Law, to which, according to the Continental

[1] Constitution, Article VI.

[2] Smith *v.* Gould, 2 Lord Raymond, R. 1274.

Congress, the several States were entitled.[1] Had these remarkable words been uttered by any other judge in Westminster Hall, they would have been important; but they are enhanced by the character of their illustrious author, to whom belongs the kindred honor of first declaring from the bench that a slave cannot breathe in England.[2]

Among the ornaments of English law none has a purer fame than Holt, who was emphatically a great judge, — being an example of learning and firmness, of impartiality and mildness, with a constant instinct for justice, and a rare capacity in upholding it. His eminent merits compelled the admiration of his biographer, Lord Campbell, who does not hesitate to say, that, "of all the judges in our annals, Holt has gained the highest reputation, merely by the exercise of judicial functions," — and then again, in striking words, that "he may be considered as having a genius for magistracy, as much as our Milton had for poetry or our Wilkie for painting."[3] And this rarest magistrate tells us judicially, that "the Common Law takes no notice of Negroes being different from other men," — in other words, it makes no discrimination on account of color. This judgment is a torch to illumine the Constitution, while it shows how naturally our fathers in the great Declaration said, "All men," and not "All *white* men," and in the Constitution said, "We the people," and not "We the *white* people."

In melancholy contrast with the monumental judg-

[1] Declaration of Rights, October 14, 1774: Journal of Congress, 1774–89, (1st edit.,) Vol. I. pp. 27–30.

[2] Campbell, Lives of the Chief-Justices of England, (London, 1849,) Vol. II. p. 138.

[3] Ibid., pp. 118, 135.

ment of the English Chief-Justice are judicial decisions in our own country, especially that masterpiece of elaborate inhumanity, the judgment of our late Chief-Justice in the Dred Scott case. But it is in the States that the word "white" has been made prominent. Such learned debate on the rights of man dependent on complexion would excite a smile, if it did not awaken indignation. There is Ohio, a much-honored State, rejoicing in prosperity, intelligence, and constant liberty; but even this eminent civilization has not saved its Supreme Court from the subtilties of refinement on different shades of human color. In the case of *Lake* v. *Baker et al.*,[1] this learned tribunal decided that a child of Negro, Indian, and white blood, but of more than one-half white, was entitled to the benefits of the common-school fund; yet in a later case the same court decided that "children of three-eighths African and five-eighths white blood, but who are distinctly colored, and generally treated and regarded as colored children by the community where they reside, are not, *as of right*, entitled to admission into the common schools set apart for the instruction of white youths."[2] Unhappy children! Even five-eighths white blood could not save them, if in their neighborhood they were known as "colored." But this magic of color showed itself yet more in the precedent of *Polly Gray* v. *The State of Ohio*, — a case of robbery, in the Court of Common Pleas, where the prisoner appearing on inspection "to be of a shade of color between the mulatto and white," a Negro was admitted to testify against her, and she was convicted; but on grave consideration by the Supreme Court, on appeal, it was de-

[1] 12 Ohio Rep., 237.

[2] Van Camp *v.* Board of Education of Logan: 9 Ohio State Rep., 406.

cided that the witness was wrongly admitted, and the judgment was reversed; and the decision stands on these words: "A Negro is not an admissible witness against a quadroon on trial charged with a crime"![1] Into this absurdity of injustice was an eminent tribunal conducted by the *ignis-fatuus* of color.

These are specimens only. To what meanness of inquiry has not the judicial mind descended in the enforcement of an odious prejudice? Such decisions are a discredit to Republican Government; and so also is the existing practice of public institutions harmonizing with them. The words of the Gospel are fulfilled, and the Great Republic, "conceived in Liberty, and dedicated to the proposition that all men are created equal,"[2] becomes "like unto *whited* sepulchres, which indeed appear beautiful outward, but are within full of dead men's bones and of all uncleanness."[3] Are not such decisions worse than dead men's bones or any uncleanness? All this seems the more irrational, when we recall the Divine example, and the admonition addressed to the Prophet: "But the Lord said unto Samuel, *Look not on his countenance,* . . . . for the Lord seeth not as man seeth; for man looketh on the outward appearance, *but the Lord looketh on the heart.*"[4] To the pretension of looking at the skin and measuring its various pigments in the determination of rights, I reply, that the heart, and not the countenance, must be our guide. Not on the skin can we look, though "white" as the coward heart of Macbeth, according to the reproach of his wife, — but on that within, constituting character, which

[1] 4 Ohio Rep., 354.
[2] Address of President Lincoln at Gettysburg: *Ante*, p. 378.
[3] Matthew, xxiii. 27.
[4] 1 Samuel, xvi. 7.

showed itself supremely in Toussaint L'Ouverture, making him, though black as night, a luminous example, and is now manifest in a virtuous and patriotic people asking for their rights. Where justice prevails, all depends on character. Nor can any shade of color be an apology for interference with that consideration to which character is justly entitled.

Thus it stands. The word "white" found no place in the original Common Law; nor did it find any place afterward in our two title-deeds of Constitutional Liberty, each interpreting the other, and being the fountain out of which are derived the rights and duties of the American citizen. Nor, again, did it find place in the Constitutional Amendment expressly defining a "citizen." How, then, can it become a limitation upon the citizen? By what title can any one say, "I am a white lord"? Every statute and all legislation, whether National or State, must be in complete conformity with the two title-deeds. To these must they be brought as to an unerring touchstone; and it is the same with the State as with the Nation. Strange indeed, if an odious discrimination, without support in the original Common Law or the Constitution, and openly condemned by the Declaration of Independence, can escape judgment by skulking within State lines! Wherever it shows itself, whatever form it takes, it is the same barefaced and insufferable imposture, a mere relic of Slavery, to be treated always with indignant contempt, and trampled out as an unmitigated "humbug." The word may not be juridical; I should not use it if it were unparliamentary; but I know no term which expresses so well the little foundation for this pretension.

CITIZENSHIP.

THAT this should continue to flaunt, now that Slavery is condemned, increases the inconsistency. By the decree against that wrong all semblance of apology was removed. Ceasing to be a slave, the former victim has become not only a man, but a Citizen, admitted alike within the pale of humanity and within the pale of citizenship. As man he is entitled to all the rights of man, and as citizen he becomes a member of our common household, with Equality as the prevailing law. No longer an African, he is an American; no longer a slave, he is a common part of the Republic, owing to it patriotic allegiance in return for the protection of equal laws. By incorporation with the body-politic he becomes a partner in that transcendent unity, so that there can be no injury to him without injury to all. Insult to him is insult to an American citizen. Dishonor to him is dishonor to the Republic itself. Whatever he may have been, he is now the same as ourselves. Our rights are his rights; our equality is his equality; our privileges and immunities are his great freehold. To enjoy his citizenship, people from afar, various in race and complexion, seek our shores, losing here all distinctions of birth, — as into the ocean all rivers flow, losing all trace of origin or color, and there is but one uniform expanse of water, where each particle is like every other particle, and all are subject to the same law. In this citizenship the African is now absorbed.

Not only is he Citizen. There is no office in the Republic, from lowest to highest, executive, judicial, or representative, which is closed against him. The doors of this Chamber swing open, and he sits here the co-

equal of any Senator. The doors of the other Chamber also swing open. Nay, Sir, he may be Vice-President, he may be President; but he cannot enter a hotel or public conveyance, or offer his child at the common school, without insult on account of color. Nothing can make this terrible inconsistency more conspicuous. An American citizen, with every office wide open to his honorable ambition, in whom are all the great possibilities of our Republic, who may be anything according to merit, is exposed to a scourge which descends upon the soul as the scourge of Slavery descended upon the flesh.

In ancient times the cry, "I am a Roman citizen," stayed the scourge of the Lictor; and this cry, with its lesson of immunity, has resounded through the ages, testifying to Roman greatness. Once it was on the lips of Paul, as appears in the familiar narrative: —

"And as they bound him with thongs, Paul said unto the centurion that stood by, Is it lawful for you to scourge a man that is a Roman, and uncondemned?

"When the centurion heard that, he went and told the chief captain, saying, Take heed what thou doest; for this man is a Roman.

. . . . . .

"And the chief captain also was afraid, after he knew that he was a Roman, and because he had bound him." [1]

Will not our "Chief Captain," will not Senators, take heed what they do, that the scourge may not continue to fall upon a whole race, each one of whom is an American and uncondemned? Is our citizenship a feebler safeguard than that of Rome? Shall the cry, "I am an

[1] Acts, xxii. 25, 26, 29.

American citizen," be raised in vain against perpetual outrage?

In speaking of the citizen as of our household, I adopt a distinction employed by a great teacher in Antiquity. Aristotle, in counsels to his former pupil, Alexander, before his career of Asiatic conquest, enjoined a broad distinction between Greeks and Barbarians. The former he was to treat as friends, and of the household; the latter he was to treat as brutes and plants.[1] This is the very distinction between Citizenship and Slavery. The Citizen is of the national household; the Slave is no better than brute or plant. But our brutes and plants are all changed into men; our Barbarians are transformed into Greeks. There is no person among us now, whatever his birth or complexion, who may not claim the great name of Citizen, to be protected not less at home than abroad, — but always, whether at home or abroad, by the National Government, which is the natural guardian of the citizen.

EQUAL RIGHTS AND AMNESTY.

Mr. President, asking you to unite now in an act of justice to a much-oppressed race, which is no payment of that heavy debt accumulated by generations of wrong, I am encouraged by the pending measure of Amnesty, which has the advantage of being recommended in the President's Annual Message. I regretted, at the time, that the President signalized by his favor the removal of disabilities imposed upon a few thousand Rebels who had struck at the life of the Republic, while he said

[1] Plutarch. De Alexandri Magni sive Fortuna sive Virtute, — Orat. I.: Moralia, ed. Reiske, p. 302.

nothing of cruel disabilities inflicted upon millions of colored fellow-citizens, who had been a main-stay to the national cause. But I took courage when I thought that the generosity proposed could not fail to quicken that sentiment of justice which I now invoke.

Toward those who assailed the Republic in war I have never entertained any sentiment of personal hostility. Never have I sought the punishment of any one; and I rejoice to know that our bloody Rebellion closed without the sacrifice of a single human life by the civil power. But this has not surprised me. Early in the war I predicted it in this Chamber.[1] And yet, while willing to be gentle with former enemies, while anxious not to fail in any lenity or generosity, and while always watching for the moment when all could be restored to our common household with Equality as the prevailing law, there was with me a constant duty, which I could never forget, to fellow-citizens, white and black, who had stood by the Republic; and especially to those large numbers, counted by the million, still suffering under disabilities having their origin in no crime, and more keenly felt than any imposed upon Rebels. Believing that duty to these millions is foremost, and that until they are secured in equal rights we cannot expect the tranquillity which all desire, — nay, Sir, we cannot expect the blessing of Almighty God upon our labors, — I bring forward this measure of justice to the colored race. Such a measure can never be out of order or out of season, being of urgent necessity and unquestionable charity.

There are strong reasons why it should be united with

[1] Speech in the Senate, May 19, 1862: Congressional Globe, 37th Cong. 2d Sess., pp. 2190, 2195; *ante*, Vol. IX. pp. 27, 70.

amnesty, especially since the latter is pressed. Each is the removal of disabilities, and each is to operate largely in the same region of country. Nobody sincerely favoring generosity to Rebels should hesitate in justice to the colored race. According to the maxim in Chancery, "Whoso would have equity must do equity." Therefore Rebels seeking amnesty must be just to colored fellow-citizens seeking equal rights. Doing this equity, they may expect equity.

Another reason is controlling. Each is a measure of reconciliation, intended to close the issues of the war; but these issues are not closed, unless each is adopted. Their adoption together is better for each, and therefore better for the country, than any separate adoption. Kindred in object, they should be joined together and never put asunder. It is wrong to separate them. Hereafter the Rebels should remember that their restoration was associated with the equal rights of all, contained in the same great statute.

Clearly, between the two the preëminence must be accorded to that for the equal rights of all, as among the virtues justice is above generosity. And this is the more evident, when it is considered, that, according to Abraham Lincoln, the great issue of the war was Human Equality.

In making the motion by which these two measures are associated, I seize the first opportunity since the introduction of my bill, nearly two years ago, of obtaining for it the attention of the Senate. Beyond this is with me a sentiment of duty. In the uncertainties of life, I would not defer for a day the discharge of this immeasurable obligation to fellow-citizens insulted and

oppressed; nor would I postpone that much-desired harmony which can be assured only through this act of justice. The opportunity is of infinite value, and I dare not neglect it. My chief regret is that I cannot do more to impress it upon the Senate. I wish I were stronger. I wish I were more able to exhibit the commanding duty. But I can try; and should the attempt fail, I am not without hope that it may be made in some other form, with increased advantage from this discussion. I trust it will not fail. Earnestly, confidently, I appeal to the Senate for its votes. Let the record be made at last, which shall be the cap-stone of the reconstructed Republic.

I make this appeal for the sake of the Senate, which will rejoice to be relieved from a painful discussion; for the sake of fellow-citizens whom I cannot forget; and for the sake of the Republic, now dishonored through a denial of justice. I make it in the name of the Great Declaration, and also of that Equality before the Law which is the supreme rule of conduct, to the end especially that fellow-citizens may be vindicated in "the pursuit of happiness," according to the immortal promise, and that the angel Education may not be driven from their doors. I make it also for the sake of peace, so that at last there shall be an end of Slavery, and the rights of the citizen shall be everywhere under the equal safeguard of national law. There is beauty in art, in literature, in science, and in every triumph of intelligence, all of which I covet for my country; but there is a higher beauty still in relieving the poor, in elevating the down-trodden, and being a succor to the oppressed. There is true grandeur in an example of justice, making the rights of all the same as our own, and beating down

prejudice, like Satan, under our feet. Humbly do I pray that the Republic may not lose this great prize, or postpone its enjoyment.

Mr. Vickers, of Maryland, on the same day, made an elaborate effort on the position of the South and Amnesty, which he opened by saying: —

"It is not my purpose to follow the Senator from Massachusetts [Mr. Sumner] in the remarks which he has made, because his amendment is not only not germane to the subject-matter properly before the Senate, but is so palpably unconstitutional that I consider it unnecessary to make any comment upon it."

January 17th, Mr. Sumner spoke again at length, introducing testimony, being letters, resolutions, and addresses from various parts of the country, and especially from the South, showing the necessity of Congressional action for the protection of Equal Rights, and that such protection was earnestly desired by colored fellow-citizens.

At the close he remarked on the importance of equality in the schoolroom.

One of the most important aspects of the pending measure is its operation on the common school, making it what is implied in its name, a school open to all. The term "common" explains itself. Originally, in England, under the law, it designated outlying land near a village open to all the inhabitants; and the common school is an institution of education open to all. If you make it for a class, it is not a common school, but a separate school, — and, as I have said frequently to-day, and also before in addressing the Senate, a separate school never can be a *substitute* for the common school. The common school has for its badge *Equality*. The separate school has for its badge *Inequality*. The one has open doors for all; the other has open doors only for those of a certain color. That is contrary to the spirit of our institutions, to the promises of the Declaration of

Independence, and to all that is secured in the recent Constitutional Amendments. So long as it continues, the great question of the war remains still undecided; for, as I explained the other day, that transcendent issue, as stated by Jefferson Davis, and then again accepted by Abraham Lincoln, was Equality. Only by maintaining Equality will you maintain the great victory of the war.

Here in Washington this very question of separate schools has for some time agitated the community. The colored people have themselves acted. They speak for Equal Rights. I have in my hand a communication to the Senate from the Secretary of the Interior, under date of January 18, 1871, covering a report from the trustees of the colored schools of Washington and Georgetown, in which they make most important and excellent recommendations. How well at last the colored people speak! Who among us can speak better than they in the passages I am about to read?

After reading these passages,[1] which he pronounced "unanswered and unanswerable," Mr. Sumner proceeded:—

Sir, I bring this testimony to a close. I have adduced letters, resolutions, addresses from various States, showing the sentiments of the colored people. I have adduced them in answer to allegations on this floor that the pending measure of Equal Rights is not needed, that the pending measure is for social equality. Listening to these witnesses, you see how they all insist that it is needed, and that it is in no respect for social equality. It is a measure of strict legal right.

[1] The first seven paragraphs under the head of "Need of Additional Legislation": Executive Documents, 41st Cong. 3d Sess., Senate, No. 20, pp. 7, 8.

I adduce this testimony also in answer to the allegation, so loftily made in debate the other day, that the colored people are willing to see the former Rebels amnestied, trusting in some indefinite future to obtain their own rights. I said at the time that such an allegation was irrational. I now show you that it is repudiated by the colored people. They do not recognize the Senators who have undertaken to speak for them as their representatives. They insist upon their rights before you play the generous to Rebels. They insist that they shall be saved from indignity when they travel, and when they offer a child at the common school, — that they shall be secured against any such outrage before you remove the disabilities of men who struck at the life of this Republic.

Now, Sir, will you not be just before you are generous? Or if you do not place the rights of the colored people foremost, will you not at least place them side by side with those of former Rebels? Put them both where I seek now to put them, in the same statute, — so that hereafter the Rebels shall know that generosity to them was associated with justice to their colored fellow-citizens, — that they all have a common interest, — that they are linked together in the community of a common citizenship, and in the enjoyment of those liberties promised by the Declaration of Independence and guarantied by the Constitution of the United States.

Mr. Frelinghuysen, of New Jersey, followed with remarks chiefly in criticism of the form of the bill, and made several suggestions of amendment. Mr. Sumner stated that his object was "to get this measure in the best shape possible," and that he should welcome any amendment from any quarter; that he did not feel as strongly as the Senator "the difference between his language and the text," but that he was anxious

to harmonize with him. Mr. Sumner afterwards modified his bill in pursuance of Mr. Frelinghuysen's suggestions.

The debate was continued on different days, — Mr. Sawyer, of South Carolina, Mr. Thurman, of Ohio, Mr. Morrill, of Maine, Mr. Saulsbury, of Delaware, Mr. Davis, of Kentucky, speaking strongly against the bill of Mr. Sumner. Mr. Sawyer objected to it as an amendment to the Amnesty Bill. Mr. Nye of Nevada, and Mr. Flanagan of Texas spoke for the bill. The latter, after saying that he had read the Constitution for himself, and was "satisfied that the proposed amendment was constitutional," added other reasons: —

"One is, that I discover, that, if we should remain here, as we certainly shall do, for a very considerable period, petitions will come in to such a degree, requiring so much paper, that really the price will be vastly enhanced, and it will thereby become a considerable tax to the Government of the United States; for the Senator is receiving, I might almost say, volumes — I know not what the quantity is; it is immense, however — from all parts of the nation."

And then again: —

"Again I am reminded that it is best to try to get rid of the imposing Senator [Mr. SUMNER] on that subject, just as the lady answered her admirer. The suitor had been importuning her time and again, and she had invariably declined to accept the proposition. At length, however, being very much annoyed, she concluded to say 'yes,' just to get rid of his importunity. I want to go with the Senator to get rid of this matter, [*laughter,*] because, really, Mr. President, we find his bill here as a breakwater. A concurrent resolution was introduced here for the adjournment of Congress at a particular day. Well, you saw that bill thrust right on it. 'Stop!' says he, 'you must not adjourn until my bill is passed.' There it was again; here it is now; and we shall continue to have it; and I am for making peace with it by a general surrender at once. [*Laughter.*] I stop not there, Mr. President; I go further, and I indorse the Senator to the utmost degree in his proposition."[1]

Mr. Morrill, in an elaborate argument, denied point-blank the constitutionality of the bill, — insisting, and repeating with different forms of expression, that "the exercise of this power on the part of Congress would be a palpable invasion of the rights of the people of the States in their purely domestic relations. . . . . This Constitution has given us no such authority and no such power."[2]

January 31st, Mr. Sumner replied to Mr. Morrill.

[1] Congressional Globe, 42d Cong. 2d Sess., p. 587.

[1] Ibid., Appendix, p. 4.

REPLY TO MR. MORRILL.

MR. PRESIDENT, before this debate closes, it seems to me I shall be justified in a brief reply to the most extraordinary, almost eccentric, argument by my excellent friend, the Senator from Maine [Mr. MORRILL]. He argued against the constitutionality of the pending amendment, — you all remember with how much ingenuity and earnestness. I shall not follow him in the details of that speech. I shall deal with it somewhat in the general, and part of the time I shall allow others to speak for me.

But before I come upon that branch of the case, I feel that in justice to colored fellow-citizens I ought to see that they have a hearing. Senators whom they helped elect show no zeal for their rights. Sir, they have a title to be heard. They are able; they can speak for themselves; but they are not here to speak. Therefore they can be heard only through their communications. Here is one from a member of the Virginia House of Delegates. It came to my hands yesterday, and is dated "Richmond, January 29, 1872." I wish the Senate would hear what this member of the Virginia House says on the pending amendment.

The letter, as read by Mr. Sumner, concluded as follows: —

"We all, Sir, the whole colored population of Virginia, make this appeal through you to a generous Senate, and pray, for the sake of humanity, justice, and all that is good and great, that equal common rights may be bestowed on a grateful and loyal people before disabilities shall have been stricken from those who struck at the very heart-strings of the Government."

Can any Senator listen to that appeal and not feel that this Virginian begins to answer the Senator from

Maine? He shows an abuse; he testifies to a grievance. Sir, it is the beginning of the argument. My friend seemed almost to ignore it. He did not see the abuse; he did not recognize the grievance.

MR. MORRILL. I certainly did see it, and I certainly recognize it. The only difference between the Senator and myself, so far as the argument is concerned, is one simply of power.

MR. SUMNER. I shall come to that. But first is the point, whether the Senator recognizes the grievance; and here let me tell my excellent friend, that, did he see the grievance as this colored citizen sees it, did he feel it as this colored citizen feels it, — Sir, did he simply see it as I see it, — he would find power enough in the Constitution to apply the remedy. I know the generous heart of the Senator; and I know that he could not hesitate, did he really see this great grievance. He does not see it in its proportions. He does not see how in real character it is such that it can be dealt with only by the National power. I drive that home to the Senator. It is the beginning of the argument in reply to him, that the grievance is such that it can be dealt with adequately only by Congress. Any other mode is inefficient, inadequate, absurd. I begin, therefore, by placing the Senator in that position. Unhappily he does not see the grievance. He has no conception of its vastness, extending everywhere, with ramifications in every State, *and requiring one uniform remedy, which, from the nature of the case, can be supplied only by the Nation.*

And now I come to the question of power; and here I allow a colored fellow-citizen to be heard in reply to the Senator. I read from a letter of E. A. Fulton, of Arkansas: —

"I have seen and experienced much of the disabilities which rest upon my race and people from the mere accident of color. Grateful to God and the Republicans of this country for our emancipation and the recognition of our citizenship, I am nevertheless deeply impressed with the necessity of further legislation for the perfection of our rights as American citizens."

This colored citizen is impressed, as the Senator is not, with the necessity of further legislation for the perfection of his rights as an American citizen. He goes on: —

"I am also thoroughly persuaded that this needed legislation should come from the National Congress."

So he replies to my friend.

"Local or State legislation will necessarily be partial and vacillating. Besides, our experience is to the effect that the local State governments are unreliable for the enforcement or execution of laws for this purpose.

"In Arkansas, for example, a statute was enacted by the General Assembly of 1868 for the purpose of securing the equal rights of colored persons upon steamboats, railroads, and public thoroughfares generally. The provisions of the statute were deemed good, if not entirely sufficient; yet to the present time gross indignities continue to be perpetrated upon colored travellers, men and women, while those charged under oath to see the laws faithfully executed look on with seeming heartless indifference while the law remains a dead letter on the statute-book.

"With a care and anxiety which one vitally interested alone can feel I have examined and weighed this subject."

Here, Sir, he replies again to my friend. I should like the Senator to notice the sentence: —

"With a care and anxiety which one vitally interested alone can feel" —

as, of course, my friend cannot feel, since he has not that vital interest —

"I have examined and weighed this subject."

What does he conclude?

"I am fully persuaded that nothing short of national legislation, and national authority for its enforcement, will be found sufficient for the maintenance of our God-given rights as men and women, citizens of this great and free country."

MR. MORRILL. As my honorable friend emphasizes that particular point, will he be kind enough to say whether he reads that letter as an authority showing that Congress has the power to do what he asks, or whether it is simply an individual opinion that some such legislation is necessary?

MR. SUMNER. I think my friend must know that I do not read the letter as an authority, according to his use of the term. By-and-by I shall come to the authority. I read it as the opinion of a colored citizen —

MR. MORRILL. As to the necessity of legislation?

MR. SUMNER. Who has felt the grievance, and testifies that the remedy can only be through the Nation. There is where he differs from my friend.

MR. MORRILL. It is not necessary to read evidence to me that the colored people think there ought to be legislation by Congress. The question between the Senator and myself is precisely this: What is your authority?

MR. SUMNER. I am coming to that. This is only the beginning.

MR. MORRILL. When you come to that, and make an issue with me, I shall be ready to answer.

MR. SUMNER. I shall come to that in due season, and give the Senator the opportunity he desires. I shall speak to the question of power. Meanwhile I proceed with the letter: —

"I have read with joy your recently presented Supplementary Civil Rights Bill. It meets my hearty approval. In the name of God and down-trodden humanity, I pray you press its enactment to a successful consummation.

"Such a law, firmly enforced, coupled with complete amnesty" —

You see the point, Mr. President, — "coupled with complete amnesty" —

"for political offences to those who once held us in bondage, will furnish, as I believe, the only sound basis of reconstruction and reconciliation for the South."

Now my friend will not understand that I exaggerate this letter. I do not adduce it as authority, but simply as testimony, showing what an intelligent colored fellow-citizen thinks with regard to his rights on two important points much debated: first, as to the necessity of remedy through the National Government; and, secondly, as to the importance of uniting this assurance of Equal Rights with Amnesty, so that the two shall go together.

Before coming directly to the authority on which my friend is so anxious, I call attention to another communication, from the President of the Georgia Civil Rights

Association, which I think should be read to the Senate. It is addressed to me officially; and if I do not read it, the Senate will not have the benefit of it. There is no Senator from Georgia to speak for the Civil Rights Association. I shall let them speak by their President, Captain Edwin Belcher: —

"I realize more and more, every day, the necessity of such a measure of justice as your 'Supplementary Bill.' When that becomes a law, the freedom of my race will then be complete."

I call attention to that point. This writer regards the pending measure essential to complete the Abolition of Slavery; and I hope you will not forget this judgment, because it will be important at a later moment in vindicating the constitutional power of Congress. "When that becomes a law, the freedom of my race will then be complete," — not before, not till then, not till the passage of the Supplementary Civil Rights Bill. Down to that time Slavery still exists. Such, Sir, is the statement of a man once a slave, and who knows whereof he speaks; nor can it be doubted that he is right.

After reading the letter at length, Mr. Sumner proceeded: —

This instructive letter is full of wise warnings, to which we cannot be indifferent. It is testimony, but it is also argument.

The necessity of this measure appears not only from Georgia, but even from Pennsylvania. I have in my hands an article by Richard T. Greener, the principal of the Colored Institute at Philadelphia, where he vindicates the pending bill. I read a brief passage, and

simply in reply to the Senator from Maine, on the necessity of Congressional action. Mr. Greener is no unworthy representative of his race. He knows well how to vindicate their rights. Here is what he says: —

"Not three weeks ago, the Committee which waited on the President from this city, in behalf of Mr. Sumner's bill, were refused accommodations at the dépôt restaurant in Washington, and only succeeded in being entertained by insisting upon just treatment. It has scarcely been three months since the secretary of the American legation at Port-au-Prince, Rev. J. Theodore Holly, with his wife and three children, was refused a state-room on the steamer running between New Haven and New York city."

Then he shows the necessity: —

"Should Minister Bassett himself, indorsed by the Union League, return home and arrive late at night, there are probably not two hotels, such as a gentleman of his station would wish to stop at, where he could be accommodated, — not a theatre or place of amusement which he could visit without insult or degrading restrictions, — not a church, except it be a Quaker or Catholic one, where he would not be shown into the gallery, or else be made to feel uncomfortable: so outrageous are the current American ideas of common hospitality and refinement; so vindictive is this persecution of a humble class of your fellow-citizens."

Lastly he vindicates the pending measure, and asks for a two-thirds vote: —

"The Supplementary Bill ought to pass by a two-thirds vote. If it passes by a simple majority, we shall, of course, be satisfied, and understand the reason why. If Republican Senators, elected by colored votes, give their influence and votes against this measure, it might be well for them to re-

member that Negroes, along with instinct, have 'terrible memories.'"

And now, Sir, after these brief illustrations, where our colored fellow-citizens have spoken for themselves, showing the necessity of legislation by the Nation, because only through the Nation can the remedy be applied, I come to the precise argument of the Senator. He asks for the power. Why, Sir, the National Constitution is bountiful of power; it is overrunning with power. Not in one place or two places or three places, but almost everywhere, from the Preamble to the last line of the latest Amendment; in the original text and in all our recent additions, again and again. Still further, in that great rule of interpretation conquered at Appomattox, which, far beyond the surrender of Lee, was of infinite value to this Republic. I say a new rule of interpretation for the National Constitution, according to which, in every clause and every line and every word, it is to be interpreted uniformly and thoroughly for human rights. Before the Rebellion the rule was precisely opposite. The Constitution was interpreted always, in every clause and line and word, for Human Slavery. Thank God, it is all changed now! There is another rule, and the National Constitution, from beginning to end, speaks always for the Rights of Man. That, Sir, is the new rule. That, Sir, is the great victory of the war; for in that are consummated all the victories of many bloody fields, — not one victory, or two, but the whole, — gleaming in those principles of Liberty and Equality which are now the pivot jewels of the Constitution.

My excellent friend from Maine takes no notice of all this. He goes back for his rule to those unhappy

days before the war. He makes the system of interpretation, born of Slavery, his melancholy guide. With such Mentor, how can he arrive at any conclusion other than alien to Human Rights? He questions everything, denies everything. He finds no power for anything, unless distinctly written in positive and precise words. He cannot read between the lines; he cannot apply a generous principle which will coördinate everything there in harmony with the Declaration of Independence.

When I refer to the Declaration, I know well how such an allusion is too often received on this floor. I have lived through a period of history, and do not forget that I here heard our great title-deed arraigned as "a self-evident lie." There are Senators now, who, while hesitating to adopt that vulgar extravagance of dissent, are willing to trifle with it as a rule of interpretation. I am not frightened. Sir, I insist that the National Constitution must be interpreted by the National Declaration. I insist that the Declaration is of equal and coördinate authority with the Constitution itself. I know, Sir, the ground on which I stand. I need no volume of law, no dog-eared page, no cases to sustain me. Every lawyer is familiar with the fundamental beginning of the British Constitution in Magna Charta. But what is Magna Charta? Simple concessions wrung by barons of England from an unwilling monarch; not an Act of Parliament, nothing constitutional in our sense of the term; simply a declaration of rights: and such was the Declaration of Independence. And now, Sir, I am prepared to insist, that, whenever you are considering the Constitution, so far as it concerns human rights, you must bring it always to that great standard;

the two must go together; and the Constitution can never be interpreted in any way inconsistent with the Declaration. Show me any words in the Constitution applicable to human rights, and I invoke at once the great truths of the Declaration as the absolute guide to their meaning. Is it a question of power? Then must every word in the Constitution be interpreted so that Liberty and Equality shall not fail.

My excellent friend from Maine takes no notice of this. He goes back to days when the Declaration was denounced as "a self-evident lie," and the Constitution was interpreted always in the interest of Slavery. Sir, I object to this rule. I protest against it with all my mind and heart and soul. I insist that just the opposite must prevail, and I start with this assumption. I shall not make a long argument, for the case does not require it. I desire to be brief. You know the Amendment: —

"SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"SECTION 2. Congress shall have power to enforce this article by appropriate legislation."

Here is an Amendment abolishing Slavery. Does it abolish Slavery half, three-quarters, or wholly? Here I know no half, no three-quarters; I know nothing but the whole. And I say the article abolishes Slavery entirely, everywhere throughout this land, — root and branch, — in the general and the particular, — in length and breadth, and then in every detail. Am I wrong? Any other interpretation dwarfs the great Amendment, and permits Slavery still to linger among us in some of

its insufferable pretensions. Sir, I insist upon thorough work. When I voted for that article, I meant what it said, — that Slavery should cease absolutely, entirely, and completely. But, Sir, Congress has already given its testimony to the true meaning of the article. Shortly after its adoption, it passed what is known as the Civil Rights Law, by which the courts of justice throughout the country, State as well as National, are opened to colored persons, who are authorized not only to sue and be sued, but also to testify, — an important right most cruelly denied, even in many of the Northern States, making the intervention of the Nation necessary, precisely as it is necessary now. That law was passed by both Houses of Congress, vetoed by the President, and passed then by a two-thirds vote over the veto of the President, and all in pursuance of these words: —

"Congress shall have power to enforce this article by appropriate legislation."

Remark, if you please, the energy of that expression; I have often had occasion to call attention to it. It is a departure from the old language of the Constitution: —

"The Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

It is stronger, — more energetic: —

"Congress shall have power to *enforce*" —

Mark, Sir, the vitality of the word —

"to *enforce* this article by appropriate legislation."

The whole field of apt legislation is open to be employed by Congress in enforcing Abolition. Congress

entered upon that field and passed the original Civil Rights Act. And who among us now, unless one of my friends on the other side of the Chamber, questions the constitutionality of that Act? Does any one? Does any one doubt it? Does any one throw any suspicion upon it? Would any one have it dropped from the statute-book on any ground of doubt or hesitation? If there is any Senator in this category, I know him not. I really should like to have him declare himself. I will cheerfully yield the floor to any one willing to declare his doubts of the constitutionality of the Civil Rights Act. [*After waiting a sufficient time.*] Sir, there is no Senator who doubts it.

Now, how can any Senator, recognizing the constitutionality of the original Civil Rights Act, doubt the present supplementary measure? Each stands on the same bottom. If you doubt one, you must doubt the other. If you rally against that Amendment, your next move should be to repeal the existing Civil Rights Act as inconsistent with the Constitution. Why does not my excellent friend from Maine bring forward his bill? Why does he not invite the Senate to commence the work of destruction, to tear down that great remedial statute? Why is he silent? Why does he hang back, and direct all his energies against the supplementary measure, which depends absolutely upon the same constitutional power? If he is in earnest against the pending motion, he must show the same earnestness against the preliminary Act.

When I assert that Congress has ample power over this question, I rely upon a well-known text often cited in this Chamber, often cited in our courts, — the judgment of the Supreme Court pronounced by Chief-Justice

Marshall, in the case of *McCulloch* v. *State of Maryland*, from which I will read a brief extract:—

"But the argument on which most reliance is placed is drawn from the peculiar language of this clause. Congress is not empowered by it to make all laws which may have relation to the powers conferred on the Government, but such only as may be '*necessary and proper*' for carrying them into execution. The word '*necessary*' is considered as controlling the whole sentence, and as limiting the right to pass laws for the execution of the granted powers to such as are indispensable, and without which the power would be nugatory,— that it excludes the choice of means, and leaves to Congress in each case that only which is most direct and simple."

These words show how the case was presented to the Court. Here is the statement of John Marshall:—

"We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the National Legislature that discretion with respect to the means by which the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and *all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional.*"[1]

In other words, the Supreme Court will not undertake to sit in judgment on the means employed by Congress for carrying out a power which exists in the Constitution. Now the power plainly exists in the Constitution;

[1] 4 Wheaton, R., pp. 413, 421.

it is to abolish Slavery, and it is for Congress in its discretion to select the means. Already it has selected the Civil Rights Law as the first means for enforcing the abolition of Slavery. I ask it to select the supplementary bill now pending as other means to enforce that abolition. One of the letters that I have read to-day from a leading colored citizen of Georgia said: "When that becomes a law, the freedom of my race will then be complete." It is not complete until then; and therefore, in securing that freedom, in other words in enforcing the Constitutional Amendment, Congress is authorized to pass the bill which I have felt it my duty to introduce, and which is now moved on the Amnesty Bill.

I might proceed with this argument. But details would take time, and I think they are entirely needless. The case is too strong. It needs no further argument. You have the positive grant of power. You have already one instance of its execution, and you have the solemn decision of the Supreme Court of the United States declaring that it is in the discretion of Congress to select the means by which to enforce the powers granted. How, Sir, can you answer this conclusion? How can my excellent friend answer it?

Were I not profoundly convinced that the conclusion founded on the Thirteenth Amendment was unanswerable, so as to make further discussion surplusage, I should take up the Fourteenth Amendment, and show how, in the first place, we have there the definition of a Citizen of the United States, and then, in the second place, an inhibition upon the States, so that they cannot make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor deny to any person within the jurisdiction of the United

States the equal protection of the laws. And here again Congress is empowered to enforce these provisions by appropriate legislation. Surely, if there were any doubt in the Thirteenth Amendment, as there is not, it would all be removed by this supplementary Amendment. Here is the definition of Citizenship, and the right to the equal protection of the laws, — in other words, Citizenship and Equality, both placed under the safeguard of the Nation. Whatever will fortify these is within the power of Congress by express grant. But if these are interpreted by the Declaration of Independence, as I insist, the conclusion is still more irresistible.

Add the original text of the Constitution, declaring that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." These words, already expounded by judicial interpretation,[1] are now elevated and inspired by the new spirit breathing into them the breath of a new life, and making them yet another source of Congressional power for the safeguard of equal rights.

But I have not done with my friend. I am going to hand him over to be answered by one of his colored fellow-citizens who has no privilege on this floor. I put George T. Downing face to face with my excellent friend, the Senator from Maine. The Senator will find his argument in one of the papers of the day. I shall read enough to show that he understands the question, even constitutionally: —

"But I come directly," says he, "to 'misconception,' — to thwarting justice. The Senator" —

Referring to the Senator from Maine —

[1] See, *ante*, p. 234.

"opposes Senator Sumner's amendment; he says it invokes an implication of some principle or provision of the Constitution somewhere, or an implication arising from the general fitness of things possibly, to enable it to invade the domiciliary rights of the citizens of a State."

These were the precise words of the Senator; I remember them well; I was astonished at them. I could not understand by what delusion, hallucination, or special *ignis-fatuus* the Senator was led into the idea that in this bill there is any suggestion of invading the domiciliary rights of the citizens of the States. Why, Sir, the Senator has misread the bill. I will not say he has not read it. He certainly has misread it. And now let our colored fellow-citizen answer him: —

"I do not speak unadvisedly, when I declare that no such end is desired by a single intelligent colored man; no such design can be gleaned from any word ever spoken by Charles Sumner; his amendment cannot by any reasonable stretch of the imagination be open to the implication."

Not a Senator, not a lawyer says that; it is only one of our colored fellow-citizens whom the Senator would see shut out of the cars, shut out of the hotels, his children shut out from schools, and himself shut out from churches; and seeing these things, the Senator would do nothing, because Congress is powerless! Our colored fellow-citizen proceeds: —

"The amendment says that all citizens, white and black, are entitled to the equal and impartial enjoyment of any accommodation, advantage, facility, or privilege furnished by common carriers, by inn-keepers, by licensed theatres, by managers of common schools supported by general taxation or authorized by law. Does any of the same invade the domiciliary rights of a citizen in any State?"

That is not my language, Sir; it is Mr. Downing's.

"Could any man, white or black, claim a right of entrance into the domicile of the poorest, the humblest, the weakest citizen of the State of Maine by virtue of Mr. Sumner's amendment, when it shall become a law? Certainly not; a man's private domicile is his own castle: no one, with even kingly pretensions, dare force himself over its threshold. But the public inn, the public or common school, the public place of amusement, as well as common carriers, asking the special protection of law, created through its action on the plea and for the benefit of the public good, have no such exclusive right as the citizen may rightfully claim within his home; and it seems to me to be invoking the aid of an unholy prejudice in attempting to force the idea that Mr. Sumner desires, or that the colored people in petitioning for civil rights are designing, to break into social circles against the wish of those who compose them."

It is difficult to answer that. The writer proceeds:—

"I have the testimony of Senator Morrill, this same Senator, to the fact 'that equality before the law, without distinction of race or color,' is a constitutional right, — for we have his declaration to that effect recorded, and further setting forth that it is 'the duty of the Circuit Court of the United States to afford a speedy and convenient means for the arrest and examination of persons charged with a disregard of the same.' (See proceedings of Senate, April, 1866.)"

I have not verified this reference; I read it as I find it. The Senator will know whether he has heretofore employed such generous language, in just conformity with the Constitution. Assuming now that he has used this language, I think, as a lawyer, he will feel that George T. Downing has the better of him. I ask my friend to listen, and perhaps he will confess:—

"If equality before the law be a constitutional right, as testified to by Mr. Morrill, and if it be the duty of the Federal courts to protect the same, as he further affirms, is not all conceded as to the right of Congress to act in the case in question, when it is shown that the public inn, the public school, the common carrier, are necessary institutions under the control of law, where equality without regard to race or color may be enforced? Can there be any question as to the same?

"I further invoke the letter of the Constitution *in behalf of Congressional action* to protect me in the rights of an American citizen; for instance," —

Again I say, this is not the argument of a Senator, nor of a lawyer, but only of one of those colored fellow-citizens for whom my friend can find no protection, —

"for instance, that article which says, 'The judicial power shall extend to all cases in law and equity arising under this Constitution.' If equality before the law be, as Mr. Morrill has declared, a constitutional right, the judicial power of the United States reaches the same. Another section says, 'The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.'"

The writer is not content with one clause of the Constitution: —

"Another section says, 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.' Another section says, 'The United States shall guaranty to every State in this Union a republican form of government.' The section last cited contemplates a case where a controlling power shall strive to have it otherwise, and the subordinated individuals need protection. Congress is left the judge of what constitutes a re-

publican form of government, and consequently of the rights incidental thereto."

Then again: —

"Another section says, 'This Constitution, and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land.' Another section says, 'The Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the powers vested by this Constitution in the Government of the United States.' Will it be said that the power is not vested in the Government of the United States to protect the rights of its citizens, and that it is not necessary and proper to do so?"

"The Senator admits that there is a constitutional inhibition against proscribing men because of their race or color in the enjoyment of rights and privileges, but he denies the existence of a constitutional right on the part of Congress to act in defence of the supreme law, when a State may disregard the Constitution in this respect. I read the Constitution otherwise. I conclude, that, when the supreme law says of right a thing shall not be, Congress, which has that supreme law as its guide and authority, has the power to enforce the same."

That, Sir, is the reply of a colored fellow-citizen to the speech of my excellent friend. I ask Senators to sit in judgment between the speech and the reply. I ask if my excellent friend is not completely answered by George T. Downing? If the latter has been able to do this, it is because of the innate strength of his own cause and the weakness of that espoused by the Senator. Our colored commentator places himself on the texts of the Constitution, and interprets them liberally, justly, for the equal rights of his race. The Senator

places himself on those same texts, but in an evil moment surrenders to that malignant interpretation which prevailed before the war and helped to precipitate the Rebellion.

Sir, I ask, Is not the constitutionality of this measure vindicated? Does any one really doubt its constitutionality? Can any one show a reason against it? Sir, it is as constitutional as the Constitution itself. You may arraign that great charter; you may call it in doubt; you may say that it is imperfect, that it is wrong; but I thank God it exists to be our guide and master, so that even my excellent friend, the able and ingenious Senator, snatching reasons, if not inspiration, from *ante bellum* arguments, when State Rights were the constant cry, and from speeches in other days, cannot overturn it. The Constitution still lives, and as long as it lives it must be interpreted by the Declaration of Independence to advance human rights.

This is my answer to the Senator on the question of power, to which he invited attention. I have spoken frankly, I hope not unkindly: but on this question I must be plain and open. Nor is this all.

Sir, there is a new force in our country. I have alluded to a new rule of interpretation; I allude now to a new force: it is the colored people of the United States counted by the million; a new force with votes; and they now insist upon their rights. They appear before you in innumerable petitions, in communications, in letters, all praying for their rights. They appeal to you in the name of the Constitution, which is for them a safeguard, — in the name of that great victory over the Rebellion through which peace was sealed; and they remind you that they mean to follow up their ap-

peal at the ballot-box. I have here an article in the last "New National Era," of Washington, a journal edited by colored persons, — Frederick Douglass is the chief editor, — and devoted to the present Administration. What does it say?

"Here, then, is a measure, just and necessary, the embodiment of the very principles upon which the Government is founded, and which distinguish it from monarchical and aristocratic Governments, — a measure upon which there should be no division in the Republican Party in Congress, and of which there is no question as to its being of more importance than Amnesty. Without this measure Amnesty will be a crime, merciless to the loyal blacks of the South, and an encouragement of treason and traitors. We have met colored politicians from the South who think that the Amnesty proposition is an attempt to gain the good-will of the white voters of the South at the expense of the colored voters. Should this feeling become general among the colored people, there is danger of a division of the colored vote to such an extent as to defeat the Republican Party. Give us the just measure of protection of our civil rights before the pardoning of those who deny us our rights and who would destroy the nation, and the colored people can feel assured that they are not to be forced into a back seat, and that traitors are not to be exalted."

Is not this natural? If you, Sir, were a colored citizen, would you not also thus write? Would you not insist that you must doubt any political party, pretending to be your friend, that failed in this great exigency? I know you would. I know you would take your vote in your hand and insist upon using it so as to secure your own rights.

The testimony accumulates. Here is another letter,

which came this morning, signed, "An Enfranchised Republican," dated at Washington, and published in the "New York Tribune." It is entitled, "President Grant and the Colored People." The writer avows himself in favor of the renomination of General Grant, but does not disguise his anxiety at what he calls "the President's unfortunate reply to the colored delegation which lately waited on him."

Now, Sir, in this sketch you see a slight portraiture of a new force in the land, a political force which may change the balance at any election, — at a State election, at a Presidential election even. Take, for instance, Pennsylvania. There are colored voters in that State far more than enough to turn the scale one way or the other, as they incline; and those voters, by solemn petition, appeal to you for their rights. The Senator from Maine rises in his place and gravely tells them that they are all mistaken, that Congress has no power to give them a remedy, — and he deals out for their comfort an ancient speech.

Sir, I trust Congress will find that it has the power. One thing I know: if it has the power to amnesty Rebels, it has the power to enfranchise colored fellow-citizens. The latter is much clearer than the former. I do not question the former; but I say to my excellent friend from Maine that the power to remove the disabilities of colored fellow-citizens is, if possible, stronger, clearer, and more assured than the other. Unquestionably it is a power of higher necessity and dignity. The power to do justice leaps forth from every clause of the Constitution; it springs from every word of its text; it is the inspiration of its whole chartered being.

Mr. President, I did not intend to say so much. I rose to-day merely to enable the absent to speak, — that colored fellow-citizens, whose own Senators had failed them, might be heard through their written word. I did not intend to add anything of my own; but the subject is to me of such incalculable interest, and its right settlement is so essential to the peace of this country, to its good name, to the reconciliation we all seek, that I could not resist the temptation of making this further appeal.

February 1st, Mr. Carpenter, of Wisconsin, in an elaborate speech, replied to Mr. Sumner, and criticized his bill, especially so far as it secured equal rights in churches and juries.

February 5th, in pursuance of the opposition announced in his speech, Mr. Carpenter moved another bill as a substitute for Mr. Sumner's. Mr. Norwood, of Georgia, sustained the substitute; Mr. Wilson of Massachusetts, Mr. Frelinghuysen of New Jersey, and Mr. Morton of Indiana predicated the earlier proposition. Mr. Sumner then replied to Mr. Carpenter.

BEFORE the vote is taken, I hope the Senate will pardon me, if I explain briefly the difference between the two amendments.

First let me say a word in regard to the way in which the amendment moved by me comes before the Senate. Even this circumstance has been dwelt on in this debate, and I have been criticized — I think not always justly — on that account. Here is a memorandum made for me at the desk from the Journal of the Senate, which shows the history of this amendment. I will read it.[1]

. . . . . .

At last, during this session, before the holidays, when the present measure of Amnesty was under considera-

[1] For this history, see Introduction, *ante*. p. 205.

tion, I found for the first time a chance. Twice had I introduced the bill, and on my motion it was referred to the Judiciary Committee, who had twice reported against it. Sir, was I to be discouraged on that account? No committee enjoys higher authority on this floor than the Judiciary Committee; but I have been here long enough to know that its reports do not always find favor. Have we not during this very session, within a very few days, seen that committee overruled on the Apportionment question?

REPLY TO MR. CARPENTER.

THEREFORE, Sir, I am not without precedent, when I bring forward an important measure and ask your votes, even though it have not the sanction of this important committee. I wish it had their sanction; but I do not hesitate to say that this bill is more important to the Judiciary Committee than that committee is important to the bill. In this matter the committee will suffer most. A measure like this, which links with the National Constitution, and with the Declaration of Independence, if the Senator from Wisconsin will pardon me —

MR. CARPENTER. I rise to ask why that inquiry is made of me. Have I criticized allusions to the Declaration of Independence?

MR. SUMNER. I feared the Senator would not allow allusion to the Declaration, except as a "revolutionary" document. I say, this measure, linked as it is with the great title-deeds of our country, merits the support not only of the Judiciary Committee, but of this Chamber. The Senate cannot afford to reject it.

Sir, I am weak and humble; but I know that when I present this measure and plead for its adoption I am strong, because I have behind me infinite justice and the wrongs of an oppressed race. The measure is not hasty. It has been carefully considered already in this Chamber, much considered elsewhere, considered by lawyers, by politicians, — ay, Sir, and considered by our colored fellow-citizens, whose rights it vindicates. But at the eleventh hour the Senator comes forward with a substitute which is to a certain extent an emasculated synonym of the original measure, seeming to be like and yet not like, feeble where the original is strong, incomplete where the original is complete, petty where the original is ample, and without machinery for its enforcement, while the original is well-supplied and most effective.

That you may understand the amendment introduced by me, I call attention to the original Civil Rights Act, out of which it grows and to which it is a supplement. That great statute was passed April 9, 1866, and is entitled, "An Act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication."[1] It begins by declaring who are citizens of the United States, and then proceeds: —

"Such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States," —

To do what?

"to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey

[1] Statutes at Large, Vol. XIV. pp. 27-29.

real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

The Senate will perceive that this Act operates not only in the National but in the State jurisdiction. No person will question that. It operates in every National court and in every State court. The language is, "in every State and Territory in the United States." Every State court is opened. Persons without distinction of color are entitled to sue and be sued, especially to be heard as witnesses, and the colored man may hold up his hand as the white man. . . . .

Now I ask the Senator from Wisconsin to consider what is the difference in character between the right to testify and the right to sit on a jury.

Mr. Carpenter. Or on the bench.

Mr. Sumner. The Senator will allow me to put the question in my own way. I say nothing about the bench, and the Senator is too good a lawyer not to see why. He knows well the history of trial by jury; he knows that at the beginning jurors were witnesses from the neighborhood, — afterward becoming judges, not of law, but of fact. They were originally witnesses from the vicinage; so that, if you go back to the very cradle of our jurisprudence, you find jurors nothing but witnesses: and now I insist that they must come under the same rule as witnesses. If the courts are opened to colored witnesses, I insist by the same title they must be opened to colored jurors. Call the right political or

civil, according to the distinction of the Senator. No matter. The right to be a juror is identical in character with the right to be a witness. I know not if it be political or civil; it is enough for me that it is a right to be guarded by the Nation. I say nothing about judges; for the distinction is obvious between the two cases. I speak now of colored jurors; and I submit, as beyond all question, that every reason or argument which opens the courts to colored witnesses must open them to colored jurors. The two go together, as natural yoke-fellows.

But do not, Sir, forget the necessity of the case. How can justice be administered throughout States thronging with colored fellow-citizens, unless you have them on the juries? Denying to colored fellow-citizens their place on the juries, you actually deny them justice. This is plain, and presents a case of startling wrong. I am in the receipt of letters almost daily, complaining of the impossibility of obtaining justice in State courts because colored fellow-citizens are excluded from juries. I say, therefore, from the necessity of the case, and also from the analogy of witnesses, the courts should be opened to colored jurors. The Senator makes a mistake, when he deals his blow in the very Temple of Justice. He strikes down the safeguards of justice for the whole colored race; and what is the excuse? That to sit on the jury is a question of politics, — that it is a political right, and not a civil right. Sir, I cannot bring myself to make any question whether it is a civil right or a political right; it is a right. It is a right which those men have by the Law of Nature, and by the National Constitution interpreted by the National Declaration.

But, Sir, not content with striking at the colored race

even in the very Temple of Justice, the Senator, finding an apology in the Constitution, insists upon the very exclusion from churches which the famous Petroleum V. Nasby had set up before. From juries I now come to churches. The Senator is not original; he copies, as I shall show, from a typical Democrat, who flourished during the war. But before I come to his prototype, let us consider the constitutional question presented by the Senator with so much gravity, without even the smile that plays so readily on his countenance. He seemed in earnest, when he read these words of the National Constitution: —

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

And still without a smile he argued that the application of the great political principles of the Declaration and of the recent Constitutional Amendments to a church organization incorporated by law was a violation of this provision, and he adduced the work of the much-venerated friend of my early life, and my master, the late Judge Story, expounding that provision. I do not know if the Senator read these words from the commentary of that great jurist: —

"The real object of the Amendment was not to countenance, much less to advance, Mahometanism, or Judaism, or infidelity, by prostrating Christianity, but to exclude all rivalry among Christian sects," —

Observe, Sir, what it is, —

"but to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment, which should

give to a hierarchy the exclusive patronage of the National Government." [1]

How plain and simple! The real object was to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment. Such was the real object.

But the Senator says, if Congress decrees that the Declaration of Independence in its fundamental principles is applicable to a church organization incorporated by State or National authority, we violate this provision of the Constitution! You heard him, Sir; I do no injustice to his argument.

Our authority, Judge Story, continues in another place: —

"It was under a solemn consciousness of the dangers from ecclesiastical ambition, the bigotry of spiritual pride, and the intolerance of sects, thus exemplified in our domestic as well as in foreign annals, that it was deemed advisable to exclude from the National Government all power to act upon the subject." [2]

To act upon what? The subject of a religious establishment. No pretence here of denying to Congress the establishment of police regulations, if you please, or the enforcement by law of the fundamental principles of the Declaration of Independence. There is nothing in this text inconsistent with such a law. The Constitution forbids all interference with religion. It does not forbid all effort to carry out the primal principles of republican institutions. Now, Sir, here is no interference with religion. I challenge the Senator to show it. There is

[1] Commentaries on the Constitution, (2d edit.,) § 1877.
[2] Ibid., § 1879.

simply the assertion of a political rule, or, if you please, a rule of political conduct. Why, Sir, suppose the manners and morals which prevailed among the clergy of Virginia during the early life of Mr. Jefferson, and recently revealed by the vivid pen of one of our best writers, should find a home in the churches of Washington. You have read Mr. Parton's account in a late number of the "Atlantic Monthly."[1] Suppose Congress, taking into consideration the peculiar circumstances, should give expression to public sentiment and impose a penalty for such scandalous conduct here under our very eyes; would that be setting up an Established Church? Would that be a violation of the National Constitution, in the provision which the Senator invokes, "Congress shall make no law respecting an establishment of religion"? And yet, in the case I suppose, Congress would enter the churches; it might be only in the District of Columbia; but the case shows how untenable is the position of the Senator, according to which the effort of Congress to preserve churches from the desecration of intemperance would be kindred to setting up an established religion. There is a desecration as bad as intemperance, which I now oppose. I introduce the case of intemperance only as an illustration.

And now, Sir, I come to the question. Suppose Congress declares that no person shall be excluded from any church on account of race, color, or previous condition; where is the interference with the constitutional provision? Is that setting up a church establishment? Oh, no, Sir! It is simply setting up the Declaration of Independence in its primal truths, and applying them to churches as to other institutions.

[1] See No. for February, 1872, Vol. XXIX. pp. 189–191. Also, Parton's Life of Jefferson, pp. 55–58.

MR. CARPENTER. Will my friend allow me, — not for the purpose of interrupting him, but to come to the point? Suppose Congress should pass a law that in no church in this country should the Host be exalted during divine service.

MR. SUMNER. The Senator knows well the difference. This is a religious observance.

Congress cannot interfere with any religious observance. Congress can do nothing to set up a religious establishment. It can make no law respecting an establishment of religion. But the Senator must see that in the case he puts, the proposed law would be the very thing prohibited by the Constitution. I thank him for that instance. I propose no interference with any religious observance, — not in the least: far from it.

Sir, the case is clear as day. All that I ask is, that, in harmony with the Declaration of Independence, there be complete equality before the law everywhere, — in the inn, on the highway, in the common school, in the church, on juries, — ay, Sir, and in the last resting-place on earth. The Senator steps forward and says: No, — I cannot accept equality in the church. There the Constitutional Amendments interpreted by the Declaration are powerless; there a White Man's Government shall prevail. A church organization may be incorporated by National or State authority, and yet allowed to insult brothers of the human family on account of the skin. In the church this outrage may be perpetrated, — because to forbid it would interfere with religion and set up an establishment.

Such, Sir, is the argument of the Senator; and he makes it in the name of Religious Liberty! Good God, Sir! Religious liberty! The liberty to insult a fellow-man on account of his skin! You listened to his elo-

quent, fervid appeal. I felt its eloquence, but regretted that such power was employed in such a cause.

I said, that, consciously or unconsciously, he had copied Petroleum V. Nasby, in the letter of that renowned character entitled, "Goes on with his Church," from which I read a brief passage: —

"CHURCH OF ST. VALLANDIGUM,
"*June the* 10*th*, 1863.

"We hed a blessid and improvin time yisterday. My little flock staggered in at the usual hour in the mornin, every man in a heavenly frame uv mind, hevin bin ingaged all nite in a work uv mercy, to wit: a mobbin uv two enrollin officers. One uv em resisted, and they smote him hip and thigh, even ez Bohash smote Jaheel. (Skriptooral, wich is nessary, bein in the ministry.) He wuz left for dead.

"We opened servis by singin a hym, wich I writ, commencin ez follows: —

"Shel niggers black this land possess,
And mix with us up here?
O, no, my friends; we rayther guess
We'll never stand that 'ere."[1]

[*Laughter.*]

I ask if that is not the Senator's speech? [*Laughter.*] I know not whether it is necessary for me to go further. Something more, I might say. Very well, I will; the Senator rather invites me.

The Senator becomes here the representative of Caste; and where, Sir? In a Christian church; and while espousing that cause, he pleads the National Constitution. Now, Sir, I have to repeat — and here I am determined not to be misunderstood — we have no right to enter the

[1] The Struggles, (Social, Financial, and Political,) of Petroleum V. Nasby, p. 71.

church and interfere in any way with its religious ordinances, as with the raising of the Host; but when a church organization asks the benefit of the law by an act of incorporation, it must submit to the great primal law of the Union, — the Constitution of the United States, interpreted by the Declaration of Independence. The Senator smiles again; I shall come to that by-and-by. Whenever a church organization seeks incorporation, it must submit to the great political law of the land. It can have the aid it seeks only by submitting to this political law. Here is nothing of religion; it is the political law, the law of justice, the law of Equal Rights. The Senator says, No; they may do as they please in churches, because they are churches, because they are homes of religion, of Christianity; there they may insult on account of the skin. I call that a vindication of Caste, and Caste in one of its most offensive forms. You all know, Sir, the history of Caste. It is the distinction of which we first have conspicuous record in the East, though it has prevailed more or less in all countries; but it is in the East that it showed itself in such forms as to constitute the type by which we describe the abuse. It is an offensive difference between persons founded on birth, not unlike that maintained among us on account of a skin received from birth.

And now pardon me, if I call attention to the way in which this discrimination has been characterized by the most eminent persons familiar with it. I begin with the words of an estimable character known in religion and also in poetry, — Bishop Heber, of Calcutta, who pictured Caste in these forcible terms: —

"A system which tends, more than anything else the Devil has yet invented, to destroy the feelings of general benevo-

lence, and to make nine-tenths of mankind the hopeless slaves of the remainder." [1]

Then comes the testimony of Rev. Mr. Rhenius, a zealous and successful missionary in the East: —

"I have found Caste, both in theory and practice, to be diametrically opposed to the Gospel, which inculcates love, humility, and union; whereas Caste teaches the contrary. It is a fact, in those entire congregations where Caste is allowed, the spirit of the Gospel does not enter; whereas in those from which it is excluded we see the fruits of the Gospel spirit."

Mr. Carpenter. Will the Senator allow me to interrupt him to ask whether these commentaries are read for the purpose of construing the Constitution of the United States? That is the only point of difference between us.

Mr. Sumner. The Senator will learn before I am through. I shall apply them.

After quoting other authorities, Mr. Sumner proceeded: —

These witnesses are strong and unimpeachable. In Caste, Government is nurturing a tremendous evil, — a noxious plant, by the side of which the Graces cannot flourish, — part and parcel of Idolatry, — a system which, more than anything else the Devil has yet invented, tends to destroy the feelings of general benevolence. Such is Caste, — odious, impious, accursed, wherever it shows itself.

Now, Sir, I am ready to answer the inquiry of the Senator, whether I read these as an interpretation of the Constitution of the United States. Not precisely; but

[1] Journey through the Upper Provinces of India, (London, 1829,) Vol. III. p. 355.

I do read them to exhibit the outrage which seems to find a vindicator in the Senator from Wisconsin, — in this respect, at least, that he can look at the National Constitution, interpreted by the National Declaration, proclaiming the Equal Rights of All, and find no word empowering Congress to provide that in churches organized by law this hideous outrage shall cease. I think I do no injustice to the Senator. He finds no power. He tells us that if we exercise this power we shall have an Established Church, and he invokes the National Constitution. Sir, I, too, invoke the National Constitution, — not in one solitary provision, as the Senator does, but from its Preamble to its last Amendment, — and I invoke the Declaration of Independence. The Senator may smile. I know how he treats that great charter. I know how in other days he has treated it. But, Sir, the Declaration survives. It has been trifled with, derided, insulted often on this floor, but it is more triumphant now than ever. Its primal truths, announced as self-evident, are more commanding and more beaming now than when first uttered. They are like the sun in the heavens, with light and warmth.

. . . . . .

Sir, is not the Senator answered? Is not the distinction clear as noonday between what is prohibited by the Constitution and what is proposed by my amendment? The difference between the two is as wide as between the sky and the earth. They cannot be mingled. There is no likeness, similitude, or anything by which they can be brought together. The Senator opposes a religious amendment. I assert that there shall be no political distinction; and that is my answer to his argument on churches.

And now, Sir, may I say, in no unkindness, and not even in criticism, but simply according to the exigencies of this debate, that the Senator from Wisconsin has erred? If you will listen, I think you will see the origin of his error. I do not introduce it here; nor should I refer to it, if he had not introduced it himself. The Senator has never had an adequate idea of the Great Declaration. The Senator smiles. I have been in this Chamber long enough to witness the vicissitudes of opinion on our Magna Charta. I have seen it derided by others more than it ever was by the Senator from Wisconsin.

MR. CARPENTER. I should like to ask the Senator from Massachusetts when he ever heard me deride it.

MR. SUMNER. The Senator will pardon me; I am coming to that. The Senator shall know. The person who first in this Chamber opened assault upon the Declaration was John C. Calhoun, in his speech on the Oregon Bill, June 27, 1848. He denounced the claim of equality as "the most false and dangerous of all political errors"; and he proceeded to say that it "has done more to retard the cause of Liberty and Civilization, and is doing more at present, than all other causes combined." He then added, that "for a long time it lay dormant, but in the process of time it began to germinate and produce its poisonous fruits,"[1] — these poisonous fruits being that public sentiment against Slavery which was beginning to make itself felt.

This extravagance naturally found echo from his followers. Mr. Pettit, a Senator from Indiana, after quot-

[1] Works, Vol. IV. pp. 507, 511, 512.

ing "We hold these truths to be self-evident, that all men are created equal," proceeded: —

"I hold it to be a self-evident lie. There is no such thing. Sir, tell me that the imbecile, the deformed, the weak, the blurred intellect in man is my equal, physically, mentally, or morally, and you tell me a lie. Tell me, Sir, that the slave in the South, who is born a slave, and with but little over one-half the volume of brain that attaches to the northern European race, is his equal, and you tell what is physically a falsehood. There is no truth in it at all."[1]

This was in the Senate, February 20, 1854. Of course it proceeded on a wretched misconstruction of the Declaration, which announced equality of rights and not any other equality, physical, intellectual, or moral. It was a declaration of rights, — nor more nor less.

Then, in the order of impeachment, followed a remarkable utterance from a much-valued friend of my own and of the Senator, the late Rufus Choate, who, without descending into the same particularity, seems to have reached a similar conclusion, when, in addressing political associates, he characterized the Declaration of Independence as "that passionate and eloquent manifesto of a revolutionary war," and then again spoke of its self-evident truths as "the glittering and sounding generalities of natural right."[2] This was in his letter to the Maine Whig State Central Committee, August 9, 1856. In my friendship for this remarkable orator, I can never think of these too famous words without a pang of regret.

This great question became a hinge in the memorable

[1] Speech in the Senate, on the Nebraska and Kansas Bill, February 20, 1854: Congressional Globe, 33d Cong. 1st Sess., Appendix, p. 214.

[2] Works, Vol. I. pp. 214, 215.

debate between Mr. Douglas and Mr. Lincoln in the contest for the Senatorship of Illinois, when the former said, in various forms of speech, that "the Declaration of Independence only included the white people of the United States";[1] and Abraham Lincoln replied, that "the entire records of the world, from the date of the Declaration of Independence up to within three years ago, may be searched in vain for one single affirmation, from one single man, that the negro was not included in the Declaration."[2] This was in Mr. Lincoln's speech at Galesburg, October 7, 1858. Elsewhere he repeated the same sentiment.

Andrew Johnson renewed the assault. After quoting the great words of the Declaration, he said in this Chamber, December 12, 1859:—

"Is there an intelligent man throughout the whole country, is there a Senator, when he has stripped himself of all party prejudice, who will come forward and say that he believes that Mr. Jefferson, when he penned that paragraph of the Declaration of Independence, intended it to embrace the African population? Is there a gentleman in the Senate who believes any such thing? . . . . There is not a man of respectable intelligence who will hazard his reputation upon such an assertion."[3]

All this is characteristic of the author, as afterward revealed to us.

Then, Sir, in the list we skip to April 5, 1870, when the Senator from Wisconsin ranges himself in the line,

[1] Political Debates between Hon. Abraham Lincoln and Hon. Stephen A. Douglas in the Campaign of 1858 in Illinois, pp. 35, 37, 52, 116, 155, 175.

[2] Ibid., p. 178.

[3] Speech on Mr. Trumbull's Amendment to Mr. Mason's Resolution relative to the Invasion of Harper's Ferry by John Brown: Congressional Globe, 36th Cong. 1st Sess., p. 100.

characterizing the great truths of the Declaration as "the generalities of that revolutionary pronunciamento." In reply to myself, he rebuked me, and said that it was my disposition, if I could not find a thing in the Constitution, to seek it in the Declaration of Independence, — and if it were not embodied in "the generalities of that revolutionary pronunciamento," then to go still further.[1]

I present this exposition with infinite reluctance; but the Senator makes it necessary. In his speech the other day, he undertook to state himself anew with regard to the Declaration. He complained of me because I made the National Constitution and the National Declaration coëqual, and declared, that, if preference be given to one, it must be to the Declaration. To that he replied: —

"Now the true theory is plain."

Mr. President, you are to have the "true theory" on this important question: —

"If the Senator from Massachusetts says, that in doubtful cases it is the duty of a court, or the duty of the Senate, or the duty of any public officer, to consider the Declaration of Independence, he is right. So he must consider the whole history of this country; he must consider the history of the Colonies, the Articles of Confederation, all anterior history. That is a principle of Municipal Law. A contract entered into between two individuals, in the language of the cases, must be read in the light of the circumstances that surrounded the parties who made it. Certainly the Constitution of the United States must be construed upon the same principle; and when we are considering a doubtful question, the whole

[1] Speech on the Admission of Georgia to Representation in Congress: Congressional Globe, 41st Cong. 2d Sess., p. 243 - 45.

former history of the country, the Declaration of Independence, the writings of Washington and of Jefferson and of Madison, the writings in 'The Federalist,' — everything that pertained to that day and gives color and tone to the Constitution, must be considered." [1]

Plainly, here is improvement. There is no derision. The truths of the Declaration are no longer "the generalities of that revolutionary pronunciamento."

MR. CARPENTER. Oh, yes, it is; I stand by that.

MR. SUMNER. The Senator stands by that. Very well.

MR. CARPENTER. I glory in it. I glory in all the history of that revolutionary period, our revolutionary fathers, our revolutionary war. It is the Revolution that I make my stand upon.

MR. SUMNER. Then, as the Senator from Vermont [Mr. EDMUNDS] remarks, the Senator should give some effect to what he glories in. I hope he will not take it all out in glory, but will see that a little of it is transfused into Human Rights.

MR. CARPENTER. All that is consistent with the express provisions of the Constitution.

MR. SUMNER. I shall come to that. The point is, that the Senator treats the Declaration of Independence as no better than the writings of Washington, of Jefferson, of Madison, "The Federalist," and everything that pertains to that day. It is only part and parcel of contemporary history, — of no special consequence, no bind-

[1] Speech, February 1, 1872: Congressional Globe, 42d Cong. 2d Sess., p. 761.

ing character, not supreme, but only one of the authorities, or at least one of the witnesses, by which we are to read the Constitution. Sir, is it so regarded by Congress, — or at least is it so regarded by the committee of this body under whose direction is printed what is known familiarly as "The Constitution, Rules, and Manual"? Here is the little volume, to which we daily turn. I find that the first document is the National Declaration, preceding the National Constitution. Sir, it precedes the Constitution in time, as it is more elevated in character. The Constitution is a machine, great, mighty, beneficent. The Declaration supplies the principles giving character and object to the machine. The Constitution is an earthly body, if you please; the Declaration is the soul. The powers under the Constitution are no more than the hand to the body; the Declaration is the very soul itself. But the Senator does not see it so. He sees it as no better than a letter of Jefferson or Madison, or as some other contemporary incident which may help us in finding the meaning of the Constitution. The Senator will not find many ready to place themselves in the isolation he adopts. It was not so regarded by the historian who has described it with more power and brilliancy than any other, — Mr. Bancroft. After setting forth what it contains, he presents it as a new and lofty Bill of Rights: —

"This immortal state-paper, which for its composer was the aurora of enduring fame, was 'the genuine effusion of the soul of the country at that time,' the revelation of its mind, when, in its youth, its enthusiasm, its sublime confronting of danger, it rose to the highest creative powers of which man is capable. *The bill of rights which it promulgates* is of rights

that are older than human institutions, and spring from the eternal justice that is anterior to the State." [1]

The vivid presentment of this state-paper, in its commanding character, like an ordinance for mankind, above all other contemporary things, shows its association with our great national anniversary.

"The nation, when it made the choice of a day for its great anniversary, selected not the day of the resolution of independence, when it closed the past, but that of the declaration of the principles on which it opened its new career." [2]

Shall I remind you, Sir, of that famous letter by John Adams to his wife, written the day after the Resolution of Independence, and pending the Declaration? Of this epoch he predicts, in words quoted with annual pride, that it "will be the most memorable in the history of America, — celebrated by descending generations as the great anniversary festival, — commemorated as the day of deliverance, by solemn acts of devotion to God Almighty, — solemnized with pomp and power, with cheers, games, sports, guns, bells, bonfires, and illuminations, from one end of this continent to the other, from this time forward forevermore." [3] And yet this Declaration, annually celebrated, having the first pages of our statute-book, placed in the fore-front of the volume of rules for our guidance in this Chamber, this triumphant Magna Charta, is to be treated as "the generalities of a revolutionary pronunciamento," or at best as of no more value than the letter of a contemporary statesman. Sir, the Senator misconceives the case; and there, allow me to say, is his error.

[1] Bancroft, History of the United States, Vol. VIII. p. 472.
[2] Ibid., p. 475.
[3] Works, Vol. IX. p. 420.

Mr. Carpenter. The Senator understood me to say, at least I said, in construing the Constitution you must undoubtedly look to the Declaration of Independence, as you must look to all the contemporary history of that day. Did I say there was no difference in the different documents? Did I say that no more importance was to be attached to the Declaration of Independence than to a letter of Madison or Washington? No, Sir, — I said no such thing.

Mr. Sumner. The Senator shall speak for himself. He has spoken now, and you shall hear what he said before: —

"Certainly the Constitution of the United States must be construed upon the same principle."

That is, as "a contract entered into between two individuals."

"And when we are considering" —

What? —

"a doubtful question, the whole former history of the country, the Declaration of Independence, the writings of Washington and of Jefferson and of Madison, the writings in 'The Federalist,' everything that pertained to that day and gives color and tone to the Constitution, must be considered."

I am happy in any word of respect for the Declaration, — because the claim of Equal Rights stands on the Constitution interpreted by the Declaration.

This brings me again to the main question. We have the National Constitution from the Preamble to the signature of George Washington, and then we have the recent Amendments, all to be interpreted by the National Declaration, which proclaims, as with trumpet: —

"We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness."

Unquestionably the Constitution supplies the machinery by which these great rights are maintained. I say it supplies the machinery; but I insist, against the Senator, and against all others, that every word in the Constitution must be interpreted by these primal, self-evident truths, — not merely in a case that is doubtful, as the Senator says, but constantly and always, so that the two shall perpetually go together, as the complement of each other; but the Declaration has a supremacy grander than that of the Constitution, more sacred and inviolable, for it gives the law to the Constitution itself. Every word in the Constitution is subordinate to the Declaration.

Before the war, when Slavery prevailed, the rule was otherwise, naturally; but, as I have already said, the grandest victory of the war was the establishment of the new rule by which the Declaration became supreme as interpreter of the Constitution. Take, therefore, any phrase in the Constitution, take any power, and you are to bring it all in subordination to those supreme primal truths. Every power is but the agent by which they are maintained; and when you come to those several specific powers abolishing slavery, defining citizenship, securing citizens in their privileges and immunities, guarding them against any denial of the equal protection of the laws, and then again securing them the right to vote, every one of these safeguards must be interpreted so as best to maintain Equal Rights. Such I assert to be Constitutional Law.

Sir, I cannot see it otherwise. I cannot see this mighty Magna Charta degraded to the level of a casual letter or an item of history. Why, Sir, it is the baptismal vow of the Republic; it is the pledge which our fathers took upon their lips when they asked the fellowship of mankind as a free and independent nation. It is loftier than the Constitution, which is a convenience only, while this is a guide. Let no one smile when it is invoked. Our fathers did not smile on the great day. It was with them an earnest word, opening the way to victory, and to that welcome in the human family with which our nation has been blest. Without these words what would have been the National Declaration? How small! Simply a dissolution of the tie between the Colonies and the mother country; a cutting of the cord, — that is all. Ah! it was something grander, nobler. It was the promulgation of primal truths, not only for the good of our own people, but for the good of all mankind. Such truths can never die. It is for us to see that they are recognized without delay in the administration of our own Government.

Mr. Carpenter replied at some length. Mr. Sumner followed.

SECOND REPLY TO MR. CARPENTER.

THE Senator insists that I am willing to disregard the Constitution. On what ground can the Senator make any such assertion? Does he suppose that his oath is stronger with him than mine with me?

MR. CARPENTER. Will the Senator allow me to answer him?

MR. SUMNER. Certainly.

MR. CARPENTER. I assume that, for the reason that when we come here to discuss a constitutional question, the power of Congress to do a certain thing, the Senator flies from the Constitution and goes to the Declaration of Independence, and says that is the source of power.

MR. SUMNER. The Senator ought to know very well that I have never said any such thing. The Senator proclaims that I fly from the Constitution to the Declaration, which I insist is the source of power. I now yield the floor again, and ask the Senator when I said what he asserts.

MR. CARPENTER. The Senator said that the Declaration was coördinate in authority with the Constitution. What did he mean by that? I supposed he used the word in the ordinary acceptation; and if he did, he meant to say that the Declaration was a coördinate grant of power.

MR. SUMNER. Just the contrary, Mr. President. Senators will bear me witness. I appeal to you all. I said just the contrary. Repeatedly I said that in my judgment the Declaration of Independence was not a grant of power, but coëqual with the Constitution,—the one being a grant of power, and the other a sovereign rule of interpretation. That is what I said. And now the Senator, in the face of my positive words, not heeding them at all, although they are found in the "Globe," vindicates himself by putting into my mouth what I never said or suggested, and then proceeds to announce somewhat grandly that I set the Constitution at nought. I challenge the Senator again to point out one word that has ever fallen from my lips, during my service in this Chamber, to sustain him in his assertion. I ask him to do it. He cannot. But why this imputa-

tion? Is the oath we have all taken at that desk binding only on him? Does he assume that he has a monopoly of its obligations; that other Senators took it with levity, ready to disregard it, — or at least that I have taken it so? Such is the assumption; at least it is his assumption with regard to me.

Now I tell the Senator, and I beg him to understand it for the future, that I shall not allow him to elevate himself above me in any loyalty to the Constitution. Willingly do I yield to the Senator in all he can justly claim of regard and honor. But I do not concede precedence in that service, where, if he does not magnify himself, he degrades me.

I have served the National Constitution longer than he has, and with such fidelity as I could command. I have served it at moments of peril, when the great principles of Liberty to which I have been devoted were in jeopardy; I have served it when there were few to stand together. In upholding this Constitution, never did I fail at the same time to uphold Human Rights. That was my supreme object; that was the ardent aspiration of my soul. Sir, I know how often I have failed, — too often; but I know that I never did fail in devotion to the Constitution, for the true interpretation of which I now plead. The Senator speaks without authority, and, he must pardon me if I say, with levity, when he makes such an allegation against one whose record for the past twenty years in this Chamber is ready to answer him. I challenge him to point out one word ever uttered by me to justify his assault. He cannot do it. He makes his onslaught absolutely without one tittle of evidence.

Sir, I have taken the oath to support the Constitution,

but it is that Constitution as I understand it. In other days, when this Chamber was filled with intolerant slave-masters, I was told that I did not support the Constitution, as I have been told to-day by the Senator, and I was reminded of my oath. In reply I borrowed the language of Andrew Jackson, and announced, that, often as I had taken that oath, I had taken it always to support the Constitution as I understood it; and it is so now. I have not taken an oath to support the Constitution as the Senator from Wisconsin understands it, without its animating soul. Sir, my oath was to support the National Constitution as interpreted by the National Declaration. The oath of the Senator from Wisconsin was different; and there, Sir, is the precise divergence between us. He swore, but on his conscience was a soulless text. I am glad that my conscience felt that there was something more.

The Senator must hesitate before he assaults me again for any failure in devotion to the Constitution. I put my life against the life of the Senator; I put my little service, humble as it is, against the service of the Senator; I put every word uttered by me in this Chamber or elsewhere against all that has been said by the Senator, — and the world shall pronounce between us on the question he has raised. If I have inclined in favor of Human Rights, if I have at all times insisted that the National Constitution shall be interpreted always so that Human Rights shall find the greatest favor, I have committed no error. In the judgment of the Senator I may have erred, but I know that in the judgment of the American people I have not erred; and here I put myself upon the country to be tried.

Sir, on that issue I invoke the sentiments of man-

kind and posterity when all of us have passed away. I know that it will be then written, that the National Constitution is the Charter of a mighty Republic dedicated to Human Rights, dedicated at its very birth by the Great Declaration, and that whoever fails to enlarge and ennoble it by the interpretation through which Human Rights are most advanced will fail in his oath to support the Constitution: ay, Sir, fail in his oath!

The debate was continued successive days: Mr. Thurman of Ohio, Mr. Ferry of Connecticut, Mr. Corbett and Mr. Kelly, both of Oregon, Mr. Hill of Georgia, Mr. Stevenson of Kentucky, and Mr. Tipton of Nebraska speaking against Mr. Sumner's bill; Mr. Harlan, of Iowa, in favor of it; and Mr. Frelinghuysen, of New Jersey, declaring his support, if Mr. Sumner would modify its provisions as to "churches."

The substitute of Mr. Carpenter was rejected, — Yeas 17, Nays 34. A motion of Mr. Frelinghuysen to make the bill inapplicable to "churches" was carried, — Yeas 29, Nays 24. The next question was on a motion of Mr. Carpenter to strike out the clause relating to "juries." This was earnestly debated by Mr. Edmunds, of Vermont. Before the vote was taken, Mr. Sumner remarked: —

There is a famous saying that comes to us from the last century, that the whole object of government in England — of King, Lords, and Commons — is to bring twelve men into a jury-box. Sir, that is the whole object of government, not only in England, but in every other country where law is administered through popular institutions; and especially is it the object of government here in the United States; and the clause in this bill which it is now proposed to strike out is simply to maintain that great principle of popular institutions.

This amendment was rejected, — Yeas 12, Nays 42. Other amendments were moved and rejected.

The question was then taken on Mr. Sumner's bill as an amendment to the Amnesty Bill, and it was adopted by the casting vote of Vice-President Colfax, — the Senate being equally divided, Yeas 28, Nays 28, as follows : —

YEAS, — Messrs. Ames, Anthony, Brownlow, Cameron, Chandler, Clayton, Conkling, Cragin, Fenton, Ferry of Michigan, Frelinghuysen, Gilbert, Hamlin, Harlan, Morrill of Vermont, Morton, Osborn, Patterson, Pomeroy, Ramsey, Rice, Sherman, Spencer, Sumner, West, Wilson, Windom, and Wright, — 28.

NAYS, — Messrs. Blair, Boreman, Carpenter, Cole, Corbett, Davis of West Virginia, Ferry of Connecticut, Goldthwaite, Hamilton of Texas, Hill, Hitchcock, Johnston, Kelly, Logan, Morrill of Maine, Norwood, Pool, Robertson, Saulsbury, Sawyer, Schurz, Scott, Stevenson, Stockton, Thurman, Tipton, Trumbull, and Vickers, — 28.

ABSENT, — Messrs. Alcorn, Bayard, Buckingham, Caldwell, Casserly, Cooper, Davis of Kentucky, Edmunds, Flanagan, Hamilton of Maryland, Howe, Kellogg, Lewis, Nye, Pratt, Sprague, and Stewart, — 17.

The announcement of the adoption of the amendment was received with great applause in the galleries.

The provisions relating to Amnesty were then taken up, and after some modification of them Mr. Sumner declared his purpose to vote for the Bill as amended, — that it was now elevated and consecrated, and that whoever voted against it must take the responsibility of opposing a great measure for the assurance of Equal Rights.

The question was then taken on the passage of the bill as amended, when it was rejected, — Yeas 33, Nays 19, — two-thirds not voting in the affirmative. Democrats opposed to the Civil Rights Bill voted against Amnesty with this association.

The attention of the Senate was at once occupied by other business, so that Amnesty and Civil Rights were for the time superseded.

May 8th, another Amnesty Bill, which had passed the House, being under consideration, Mr. Sumner moved to strike out all after the enacting clause and insert the Civil Rights Bill. Mr. Ferry, of Connecticut, promptly objected that the amendment was not in order ; but Vice-President Colfax overruled the point, and was sustained by the Senate. The next day Mr. Ferry moved to strike out of Mr. Sumner's bill the words applicable to "common schools and other public institutions of learning," which was rejected, — Yeas 25, Nays 26. Mr. Blair, of Missouri, then moved that "the people of every city, county, or State" should "decide for themselves the question of mixed or separate schools," and this was rejected, — Yeas 23, Nays 30. Mr. Carpenter

moved to strike out the section relating to "juries," and this was rejected, — Yeas 16, Nays 33. On a motion by Mr. Trumbull, of Illinois, to strike out the first five sections of Mr. Sumner's bill, the votes being Yeas 29, Nays 29, the casting vote of Vice-President Colfax was given in the negative, amidst manifestations of applause in the galleries. The question was then taken on the motion to substitute the Civil Rights Bill for the Amnesty Bill, and it was lost, — Yeas 27, Nays 28. Mr. Sumner at once moved the Civil Rights Bill as an addition, with the result, — Yeas 28, Nays 28, and the adoption of the amendment by the casting vote of the Vice-President. This amendment as in Committee of the Whole was then concurred in by the Senate, — Yeas 27, Nays 25. On the passage of the bill thus amended, the vote stood, Yeas 32, Nays 22 ; so that, two-thirds not voting in the affirmative, the bill was rejected.

Again there was a lull in the two measures.

May 10th, Mr. Sumner introduced another Supplementary Civil Rights Bill, being his original bill with such verbal changes and emendations as had occurred during its protracted consideration, and the bill was placed on the calendar of the Senate without reference to a committee.

May 21st, the Senate having under consideration a bill to extend the provisions of the Enforcement Act in the Southern States, known as the Ku-Klux Act, and entering upon a "night session" in order to pass the bill, Mr. Sumner, who was an invalid, contrary to his habit left the Chamber. In the early morning the bill was passed, when the Senate, on motion of Mr. Carpenter, of Wisconsin, took up Mr. Sumner's Civil Rights Bill, and, striking out all after the enacting clause, inserted a substitute, imperfect in machinery, and with no allusion to schools, institutions of learning, churches, cemeteries, juries, or the word "white." The bill thus changed passed the Senate in Mr. Sumner's absence. Meanwhile Mr. Spencer, of Alabama, had moved an adjournment, saying, "It is unfair and unjust to take a vote upon this bill during the absence of the Senator from Massachusetts. . . . . I insist on the motion to adjourn, as the Senator from Massachusetts is not here." The motion was rejected. A messenger from the Senate informed Mr. Sumner of the effort making, and he hurried to the Chamber ; but the bill had been already acted on, and another Amnesty Bill on the calendar taken up, on motion of Mr. Robertson, of South Carolina, and pressed to a final vote. Mr. Sumner arrived in season to

protest against this measure, unless associated with Equal Rights. At the first opportunity after reaching his seat, he said: —

MR. PRESIDENT, I understand that in my absence, and without any notice to me from any quarter, the Senate have adopted an emasculated Civil Rights Bill, with at least two essential safeguards wanting, — one concerning the Common Schools, and the other concerning Juries. The original bill contains both, and more; and I now ask the Senate, most solemnly, to consider whether, while decreeing equal rights for all in the land, they will say that those equal rights shall not prevail in the common school and in the jury. Such I understand to have been the vote of the Senate. What will ensue, should it be confirmed by the other House? The spirit of Caste will receive new sanction in the education of children; justice will find a new impediment in the jury.

Sir, I plead for the colored race, who unhappily have no representative on this floor. I ask the Senate to set its face against the spirit of Caste now prevailing in the common schools, against the injustice now installed in the jury. I insist that the Senate shall not lose this great opportunity. You recognize the commanding principle of the bill. Why not, then, apply it throughout, so that hereafter there shall be no question? For, Sir, be well assured, there is but one way of settling this great cause, and that is by conceding these equal rights. So long as they are denied you will have the colored people justly complaining and knocking at your doors, — and may I say, so long as I remain in this Chamber you will have me perpetually demanding their rights. I cannot, I will not cease. I ask, Sir, that this terrible strife be brought to an end, and the cause settled for-

ever. Now is the time. But this cannot be, except by the establishment of equal rights absolutely and completely wherever the law can reach.

Sir, early in life I vowed myself to nothing less than the idea of making the principles and promises of the Declaration of Independence a living reality. This was my aspiration. For that I have labored. And now at this moment, as its fulfilment seems within reach, I appeal to my fellow-Senators that there shall be no failure on their part. Make, I entreat you, the Declaration of Independence in its principles and promises a living letter; make it a practical reality.

One word more. You are about to decree the removal of disabilities from those who have been in rebellion. Why will you not, with better justice, decree a similar removal of disabilities from those who have never injured you? Why will you not accord to the colored race the same amnesty you offer to former Rebels? Sir, you cannot go before the country with this unequal measure. Therefore, Sir, do I insist that Amnesty shall not become a law, unless at the same time the Equal Rights of All are secured. In debate this winter I have often said this, and I repeat it now with all the earnestness of my nature. Would I were stronger, that I might impress it upon the Senate!

A motion by Mr. Sumner to append his bill was rejected, — Yeas 13, Nays 27, — and the question returned on the Amnesty Bill.

Mr. Sumner then declared his purpose to vote against the Amnesty Bill: —

Mr. President, I long to vote for amnesty; I have always hoped to vote for it; but, Sir, I should be unworthy of my seat as a Senator if I voted for it while the colored race are shut out from their rights, and the

ban of color is recognized in this Chamber. Sir, the time has not come for amnesty. How often must I repeat, "Be just to the colored race before you are generous to former rebels"? Unwillingly I press this truth; but it belongs to the moment. I utter it with regret; for I long to record my name in behalf of amnesty. And now let it not go forth that I am against amnesty. I here declare from my seat that I am for amnesty, provided it can be associated with the equal rights of the colored race; but if not so associated, then, so help me God, I am against it.

The Amnesty Bill was then passed, with only two dissenting votes, — Mr. Sumner, and Mr. Nye, of Nevada.

Mr. Sumner then made an ineffectual effort to obtain a reconsideration of the votes just taken, so that on another day, in a full Senate, he could be heard. Here he said: —

Mr. President, I had supposed that there was an understanding among the friends of civil rights that the bill for their security should be kept on a complete equality with that for amnesty, — which could be only by awaiting a bill from the House securing civil rights, precisely as we have a bill from the House securing amnesty. The two measures are not on an equality, when the Senate takes up a House bill for amnesty and takes up simply a Senate bill for civil rights. I will not characterize the transaction; but to me it is painful, for it involves the sacrifice of the equal rights of the colored race, — as is plain, very plain. All this winter I have stood guard here, making an earnest though unsuccessful effort to secure those rights, insisting always that they should be recognized side by side with the rights of former Rebels. Many Senators agreed with me; but now, at the last moment, comes the sacrifice. The Am-

nesty Bill, which has already prevailed in the House, passes, and only awaits the signature of the President; while an imperfect Civil Rights Bill, shorn of its best proportions, which has never passed the House, is taken up and rushed through the Senate. Who can tell its chances in the other House? Such, Sir, is the indifference with which the Senate treats the rights of an oppressed people!

Sir, I sound the cry. The rights of the colored race have been sacrificed in this Chamber, where the Republican Party has a large majority, — that party, by its history, its traditions, and all its professions, bound to their vindication. Sir, I sound the cry. Let it go forth that the sacrifice has been perpetrated. Amnesty is adopted; but where are the equal rights of the colored race? — still afloat between the two Houses on an imperfect bill. And what is their chance? Pass the imperfect bill and still there is a denial of equal rights. But what is the chance of passing even this imperfect measure? Who can say? Is it not a sham? Is it not a wrong which ought to ring through the land?

Sir, I call upon the colored people throughout the country to take notice how their rights are paltered with. I wish them to understand, that here in this Chamber, with a large majority of Republicans, the sacrifice has been accomplished; and let them observe how. They will take note that amnesty has been secured, while nothing is secured to them. Now, Sir, would you have your work effective, you should delay amnesty until a bill for civil rights has passed the House, and reaching this Chamber the two measures will then be on a complete equality. Anything else is sacrifice of the colored race; anything else is abandonment of an imperative duty.

The Senate then adjourned at ten o'clock and twenty minutes on the morning of May 22d.

Nothing further occurred on this interesting subject during the remainder of the session. The Amnesty Bill became a law. The Civil Rights Bill was not considered in the House; so that even this imperfect measure failed. At the next session of Congress Mr. Sumner was an invalid, under medical treatment, and withdrawn from the Senate, so that he was unable to press his bill; nor did any other Senator move it.

December 1, 1873, on the first day of the session, Mr. Sumner again brought forward his bill in the following terms: —

A BILL supplementary to an Act entitled "An Act to protect all persons in the United States in their civil rights, and furnish the means of their vindication," passed April 9, 1866.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no citizen of the United States shall, by reason of race, color, or previous condition of servitude, be excepted or excluded from the full enjoyment of any accommodation, advantage, facility, or privilege furnished by inn-keepers; by common carriers, whether on land or water; by licensed owners, managers, or lessees of theatres or other places of public amusement; by trustees, commissioners, superintendents, teachers, or other officers of common schools and public institutions of learning, the same being supported by moneys derived from general taxation or authorized by law; also of cemetery associations and benevolent associations supported or authorized in the same way: *Provided*, That private schools, cemeteries, and institutions of learning, established exclusively for white or colored persons, and maintained respectively by voluntary contributions, shall remain according to the terms of their original establishment.

SEC. 2. That any person violating any of the provisions of the foregoing section, or aiding in their violation, or inciting thereto, shall, for every such offence, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action on the case, with full costs, and shall also, for every such offence, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year: *Provided*, That the party aggrieved shall not recover more than one penalty; and when the offence is a refusal of burial, the penalty may be recovered by the heirs-at-law of the person whose body has been refused burial.

SEC. 3. That the same jurisdiction and powers are hereby conferred, and the same duties enjoined upon the courts and officers of the United States in the execution of this Act, as are conferred and enjoined upon such courts

and officers in sections three, four, five, seven, and ten of an Act entitled "An Act to protect all persons in the United States in their civil rights, and furnish the means of their vindication," passed April 9, 1866, and these sections are hereby made a part of this Act; and any of the aforesaid officers, failing to institute and prosecute such proceedings herein required, shall, for every such offence, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case, with full costs, and shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not less than one thousand dollars nor more than five thousand dollars.

SEC. 4. That no citizen, possessing all other qualifications which are or may be prescribed by law, shall be disqualified for service as juror in any court, National or State, by reason of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors, who shall fail to summon any citizen for the reason above named, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not less than one thousand dollars nor more than five thousand dollars.

SEC. 5. That every discrimination against any citizen on account of color, by the use of the word "white," or any other term in law, statute, ordinance, or regulation, National or State, is hereby repealed and annulled.

On the reïntroduction of this bill, the original clause relating to "churches" was omitted, in order to keep it in substantial harmony with the votes of the Senate.

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